



**Report of: Chief Procurement Officer & Strategic Equality Manager**

**Meeting: Scrutiny Board (Central and Corporate Functions)**

**Date: 2nd February 2009**

**Subject: Inquiry into Procurement, Outsourcing and Commissioning Services - Session 3**

## **1.00 PURPOSE OF THIS REPORT**

1.01 The purpose of this report is:

- a) To update Members on the timescales for implementing the 'one-council approach to commissioning' framework.
- b) To address the remaining questions identified in the terms of reference for this investigation, that were not addressed in earlier sessions. Those questions were:
  - i) "How the Council ensures the ethical values of the Council are incorporated into contracts"
  - ii) "How organisations commissioned to deliver services meet the duties within relevant equality legislation".

## **2.00 THE 'ONE-COUNCIL' APPROACH TO COMMISSIONING FRAMEWORK**

### **2.01 Next Steps**

- 2.02 Following its positive endorsement at the one-council steering group in November 2008, the commissioning framework will be reported to CLT in February/March 2009 with a view to implementation early in the new council year 2009/10
- 2.03 The report to CLT will outline a suggested methodology and timeline for establishing the framework. Some parts of the framework already existing by other parts need to be developed as a matter of priority e.g. developing a category management approach, and improving effective delivery (contract management).
- 2.04 If the one-council commissioning framework continues to be supported by CLT, a detailed implementation plan will be developed.

## **3.00 ETHICAL VALUES IN PROCUREMENT**

### **3.01 Introduction**

- 3.02 Ethical procurement formed part of the socially responsible procurement (SRP) section of the Procurement Strategy 2005–2008. Sustainability and environmental

management, equality and diversity, and fair trade made up the rest of the section. This disintegration of similar themes was a little confusing as equality, diversity, and fair trade measures are all ethical pursuits, wherever they go beyond merely what is legislated. For that reason, the proposed One Council Approach to Commissioning Framework includes a more holistic core commissioning objective, labelled 'Socially Responsible Commissioning'.

- 3.03 That said, in the strictest sense of the word, ethical procurement is often seen as a vehicle to ensure that supply chain practices are fair and historically, has been synonymous with high profile campaigns, such as the animal rights movement. Both these themes are still extremely relevant but the word ethical also encompasses any activity that is morally righteous, whether it be environmental protection or improving the diversity of our supplier base. Initiatives like fair trade are examples of ethical supply chain practice but the term ethical procurement can also be thought of as being synonymous with socially responsible procurement.
- 3.04 Paragraphs 3.05 to 3.29 of this report sets out what's been done in terms of practical intervention in the procurement process also discusses some of the governance structures developed to support and underpin our socially responsible procurement endeavours.

### **3.05 Historical Background & Achievements in SRP**

- 3.06 A Sustainable Procurement Toolkit was developed initially in late 2007 in an attempt to standardise our approach to implementing sustainability measures in the procurement process. Initially, the toolkit's use was relatively sporadic, by virtue of its pilot status. To address the poor take-up, a questionnaire was released to invite critique and constructive comment. The information liberated was then used to help the revision of the toolkit, in order to make it more usable. It was subsequently rebranded as the Socially Responsible Procurement Toolkit to help ensure that officers knew that it covered more than just green issues. Amongst other things, the toolkit encourages users to consider potential ethical considerations that could form part of their procurement projects.
- 3.07 The Procurement Unit has had some success in building environmental sustainability into contract delivery. An example of this is the supply of fresh fruit and vegetables contract. Bidders were asked to provide proposals for the reduction of associated food miles as well as details about their supply chains and there was also an embedded requirement for carbon emissions to be offset against the contract. The specification requirement for 'fresh' produce meant that the fruit and vegetables supplied was more likely to be sourced locally, supporting the economy and reducing emissions associated with excess transportation. Linked to the fruit and vegetables contract, in the provision of catering for school meals, menus were redrafted to promote seasonal food, which has greater local availability and is less energy intensive to produce.
- 3.08 Also, in the tender for the council's passenger services, the environmental performance of the taxi firm's fleets was taken into consideration during the evaluation process and average emissions figures CO<sub>2</sub>/g were assigned to each company on the framework list with the ultimate aim of encouraging the client department to use them in preference, wherever possible. The above examples are far from exhaustive, with a plethora of contracts incorporating measures to improve environmental performance.

- 3.09 Nevertheless, our efforts have not been limited to environmental protection. We have also looked at improving the socioeconomic status of Leeds. Indeed, The Procurement Unit has a long history of supplier engagement, especially with 3<sup>rd</sup> sector organisations, small-medium sized enterprises (SMEs), and minority group businesses, such as BMEs, who are often under-resourced and lacking capacity to tender for council work. Much work has been done, in terms of simplifying procurement language, advertising opportunities through a consistent e-tendering platform, and streamlining tender documentation to remove unnecessary obstacles. Contracts are also packaged in a way that encourages smaller businesses, where appropriate, by splitting larger contracts into smaller lots and encouraging consortia bids. Furthermore, procurement guides have been promoted to cover a multitude of specialist subjects and issues, such as 'Tendering Made Easy', 'Equality Diversity and the Procurement Process', and the 'Passport to the Environment'. The logic of taking such measures is not only vested in ethics but also economically prudent as it helps strengthen the local economy, by providing an outlet for local businesses, sharing wealth more evenly, and maintaining a diverse supplier base better able to serve the differing needs of the city.
- 3.10 The Procurement Unit has also contributed to the council's work towards level 3 and level 4 of the Equality Standard for Local Government. As part of that assistance, a quality assurance questionnaire was developed, which it is hoped will be used during the scoping stage of procurement projects to cross-reference equality criteria against the specification and identify mechanisms for creating equality where adequate provisions are lacking. Broadly speaking, the form looks to ensure that the specification addresses and protects the diverse requirements of service users, as well as other stakeholders potentially affected during service delivery. It also seeks to assure that contractors working with the council have open and fair recruitment processes and there is a high level of awareness and communication regarding contract-specific equality issues. See Section 4.00 of this report for more information on equality and diversity through procurement.
- 3.11 Additionally, in a regional tender thought to be the first of its kind in the UK, we put forth our requirements for a suite of fair trade food products. We asked for the Fairtrade Mark or equivalent, detailing explicitly our intention to procure fair trade products, through the subject matter of the contract and specification. Everything was tied to the council's resolution on fair trade and its status as a 'Fairtrade City', which avoided the risk of legal contention. The awarded contractor offers Fairtrade Mark certified products, which guarantees that producers of food crops have been paid a minimum, subsistence wage that reflects the true costs of production and offers some level of discretionary income. A separate social premium is also paid to designated local committees, who can spend the money on development projects to improve the surrounding community. Fundamentally, the Fairtrade Mark helps to ensure that ethics are maintained during transactions in the lower tier of supply chains.
- 3.12 Other fair trade successes include the development, release, and purchase of the Lord Mayor's Fairtrade Coffee Blend, which was produced by a local social enterprise, Just Coffee People, and was contractually stipulated as the de facto coffee to be served by our catering provider, Dine, at all events. Furthermore, standard wording has been produced for inviting fair trade options in any relevant contract.

3.13 In all food-related procurements, we stipulate, through the specification, that no genetically-modified ingredients can be present in the products supplied, nor used in animal feed provided to livestock. This is complemented by an ingredient declaration sheet, which contains a list of prohibited food additives known to cause potential behavioural problems and/or other health effects, as well as a section that canvasses food intolerance data and asks tenderers to group products according to dietary requirements, such as 'suitable for coeliac'. These caveats go beyond minimum legislation and as such, fall under the banner of ethical procurement.

3.14 The above are just several examples of the practical application of social responsibility, or ethics, in the procurement process. However, it is important to note that whilst success has been achieved, it has mostly been confined to environmental and socioeconomic measures, often linked to both local and national policies and strategies.

### **3.15 SRP Gaps and Potential Future Areas of Focus**

3.16 A draft 'Responsible Procurement Policy' has been developed, which sets out our vision along with the commitments that will permit us to achieve it. Embedded in the proposed commitments are 'taking into consideration ethical considerations, such as supply chain labour practices' and 'only buying timber and timber products that are legal and sustainable', which were two social responsibility issues that had been lacking previously. The policy also sets forth numerous pledges aimed at improving our environmental sustainability and socioeconomic performance, as well as around our ethical and binding requirement to spend public money more effectively and efficiently. It is intended that the policy will be endorsed corporately and championed by an appropriate council member. An underlying governance regime to aid the successful implementation of the policy and a formalised business case are currently being prepared.

3.17 Ethical supply chain practices have been highlighted as part of the Procurement Unit's service improvement plan. The outcome coveted is that ethical wider supply chain practices are encouraged within our own supplier base. The action is to identify all contracts posing the risk of unethical labour practices in associated supply chains and through the procurement process, compel contractors to ensure that their own suppliers meet appropriate ethical labour standards, even when those partners operate in countries lacking the legal protection afforded in developed countries.

3.18 The below issues generate both scope and necessity for intervention, especially considering that the proposed procurement policy commits us to 'not buying products that are known to have been tested on animals'.

3.19 In the most recent let of the contract for supply of cleaning materials nothing was asked in the tender documents regarding the use of vivisection during the manufacture and testing of the products offered to the council. Retrospectively, the awarded contractors were emailed and asked about animal testing and their range of products. Three of the four contractors on the framework stated that none of their products incorporated animal testing in their development, with the final contractor declining to mention it, opting instead to attempt to prove their environmental credentials.

- 3.20 Although animal testing is perhaps less common in some industries nowadays, by not proactively supporting its abolishment or restriction whenever total cessation is impossible, we risk permitting a highly controversial and unethical practice, which if exposed could be highly damaging to our reputation. We should always ask for evidence of measures taken by suppliers in any relevant tender documentation.
- 3.21 Separate to animal testing, but also relating to animal welfare, are issues regarding the ethics of food supply from livestock. The council has a contract for fresh meat and sausage and we also buy eggs from YPO. There has been much public and media furore in the past two years in protest against the unethical techniques deployed in intensive farming. Of particular contention has been the horrific conditions that hens are subjected to. More recently, attention has turned to animals reared for meat and criticism has been levelled at the slaughter age chosen, the conditions they are kept under, and the feed used to sustain them. The desire for ever cheaper meat has devastating consequences, not only for the welfare of farm animals, but also for the environment and human health.
- 3.22 The eggs bought from YPO are most probably used for schools and social services and are categorised as originating from 'colony' hens, which although slightly better than battery varieties, still involves caging birds indoors. Additionally, the previous meat and sausage contract didn't stipulate any requirements in terms of enhanced animal welfare, or ethical treatment.
- 3.23 The current situation needs to be redressed by ensuring that renewed contracts incorporate adequate safeguards where possible. A pertinent and moral framework that we could use, elaborated by the Farm Animal Welfare Council (set up as a think-tank by central government), is known as the 'Five Freedoms'. These form a logical basis for the assessment of welfare within any livestock system together with the actions necessary to safeguard welfare within the constraints of an efficient livestock industry. The Five Freedoms are:
- a) Freedom from hunger and thirst - by ready access to fresh water and a diet to maintain full health and vigour;
  - b) Freedom from discomfort -by providing an appropriate environment including shelter and a comfortable resting area;
  - c) Freedom from pain, injury or disease- by prevention or rapid diagnosis and treatment;
  - d) Freedom to express normal behaviour - by providing sufficient space, proper facilities and company of the animals' own kind;
  - e) Freedom from fear and distress - by ensuring conditions and treatment to avoid mental suffering.
- 3.24 We would also be prudent to request evidence against the five freedoms to prove that those entrusted with care of livestock displayed:
- a) caring and responsible planning and management;
  - b) skilled, knowledgeable and conscientious stockmanship;
  - c) appropriate environmental design (for example, of the husbandry system);

- d) considerate handling and transport; and,
- e) humane slaughter methods.

- 3.25 Fortunately, eggs will form part of a new contract covering a suite of staple groceries, whilst the renewal of the fresh meat and sausage contract is to be advertised around April time, which gives as the opportunity to invoke positive change. Procurement Unit will assist in the scoping of the tender documentation to address the associated ethical issues.
- 3.26 An aspirational ethical area currently being investigated is the idea of paying living wages to both our own and outsourced employees. This is a concept that has been explored and at least partially implemented by the Greater London Authority (GLA). They define a living wage as '*a wage that achieves an adequate level of warmth and shelter, a healthy palatable diet, social integration, and avoidance of chronic stress for earners and their dependents*'. The national minimum wage is currently £5.73 but through research, the GLA found that the figure was totally inadequate in London, identifying a so-called poverty threshold wage of £6.50. This led to the idea of a buffer hourly payment in excess of that value to more accurately reflect the costs of living a decent life. Their living wage was subsequently set at £7.45.
- 3.27 Two approaches were taken: one related to the internal corporate social responsibility (CSR) of the GLA hub and the other to the external CSR of contractors delivering outsourced services. Internally, the GLA now pay all directly employed staff the living wage, so as to practice what they preach. Then, through the procurement process, the same requirement has been stipulated upon contractors supplying support services, such as cleaning. This is not yet systemic but there is a desire for it to be all-encompassing in time.
- 3.28 Research by the GLA and some private sector partners has identified a number of benefits attributable to the living wage, including:
- Easier recruitment and retention, thus reducing recruitment costs
  - Higher quality staff
  - Better attendance
  - Better productivity, motivation, and loyalty
  - Better quality of service
- 3.29 Most ethical considerations incorporated into procurement processes will have financial implications – either through increased prices or by limiting competition. Also, the legal framework surrounding public sector procurement can often restrict the extent to which social considerations can feature in specifications and evaluation/selection criteria. The financial and legal implications will need to be considered carefully when taking the SRP agenda forward.

## **4.00 EMBEDDING EQUALITY IN PROCUREMENT**

### **4.01 Introduction**

- 4.02 The council has developed the Leeds Strategic Plan, which has at its heart the need to close the gap which exists within the city. The Procurement Strategy, the

Commissioning Framework and the Equality and Diversity Scheme support the delivery of the improvement priorities in the Leeds Strategic Plan.

- 4.03 The Procurement Strategy focuses on the need to ensure that the council procures and commissions services in an appropriate manner which promotes and enables the council to achieve its objectives and provides value for money. Within the One Council Commissioning Framework equality is articulated as an aspect of socially responsible commissioning.
- 4.04 The Equality and Diversity Scheme focuses on the need to eradicate discrimination from all council services and to ensure that all employment opportunities and services are accessible to all the diverse communities within Leeds.
- 4.05 There is clear overlap between these 2 areas, and paragraphs 4.07 to 4.44 of this report look at:
- a) the current and anticipated legislative framework which covers equality and procurement/commissioning
  - b) the internal objectives in this area
  - c) how equality is currently embedded within the commissioning and procurement process, and,
  - d) how to further embed equality
- 4.06 Further, separate, work is also being undertaken to ensure the diversity of suppliers, contractors and commissioning agents is increased.

#### **4.07 Background**

- 4.08 The Equality and Diversity Scheme 2008 – 2011 was developed following extensive consultation with communities. One of the priority outcomes relates specifically to procurement. This is:

<b>Outcomes</b>	<b>Actions</b>
All organisations commissioned to deliver services meet the duties within the relevant equality legislation	Develop and rollout equality assurance and impact assessments within procurement
Our staff have the skills, understanding and confidence they need to ensure that through procurement arrangements organisations we commission to deliver our services meet duties within relevant equality legislation	Develop and deliver training programme for all procurement staff to ensure they know, understand and implement our equalities duties in awarding contracts for functions, goods and services.

- 4.09 The Equality Standard for Local Government (a process to embed equality in all aspects of service delivery and employment; it was previously a best value performance indicator) has undergone a review and it is anticipated that the new

Equality Framework, due to be launched in January 2009 will further strengthen the requirements around equality and procurement.

- 4.10 Good quality services depend on appropriately skilled workforces. It is vital that services are delivered by staff who show respect for different cultures, value all people and understand the needs of different communities.
- 4.11 For service contracts it is absolutely appropriate under Procurement Regulations to take account of the contractors' ability in this respect. Where there is tension is around the relevance of this in respect of contracts relating to the provision of goods. We have a legal duty to promote equality and this potentially conflicts with EU procurement regulations.

#### **4.12 Legislation**

- 4.13 Current English legislation contained within the Local Government Act 1988 emphasises economic considerations in procurement. In potential conflict to this are the duties to promote equality as contained within equality legislation (Race Relations Act 1976 as amended, Disability Discrimination Act 1995 as amended, and the Equality Act 2006).
- 4.14 The Equalities Review, chaired by Sir Trevor Phillips raised the issue of procurement in both the interim and the final report 'Fairness and Freedoms'. The Women and Work Commission's report 'Shaping a Better Future' proposed the use of procurement for addressing the equal pay gap.
- 4.15 This is being driven forward in the Equality Bill which is currently going through Parliament. It is anticipated that the new Equality Act will provide clarification and guidance in the area of equality and procurement. The consultation paper states:

"We are keen to ensure that public authorities build equality considerations into their procurement processes ... ..where this will contribute to the achievement of their equality objectives"

- 4.16 It is anticipated therefore that the new equality Act will take a much more proactive approach to procurement and using it as a vehicle to address inequality. It is also hoped that there will be clarity between this and European procurement legislation where there is also potential conflict with English equality legislation.
- 4.17 EC procurement directive 2004 clarifies the scope for social issues including equality in employment. Recital 33 of the directive explicitly lists some of the social considerations that can be included in contract performance conditions such as employment of long term unemployed people and the provision of training programmes for young people.
- 4.18 It is also clear from the Office of Government Commerce guidance, December 2008, 'Make Equality Count' that public authorities must ensure that their procurement activities are operated in a way that meets their legal equality obligations.

#### **4.19 Current Position**

- 4.20 At a number of stages within the procurement process there is an opportunity to influence contractors re equality, diversity and cohesion considerations. Appendix



A outlines the council's current approach to equality in procurement. The Contract Procedure Rules outline the requirements at different stages of procurement. The stages included are:

- Pre qualification
- Specification
- Tender
- Contract award
- Contract monitoring

- 4.21 **Pre Qualification** - within the Delivering Successful Change methodology there is a link to the impact assessment process. This ensures, that were appropriate, this process is used. Any findings from this can then be incorporated into the most relevant stage of the procurement process. In addition, there are formal standard questions within the PQQ which are used in all procurement exercises. These demonstrate consideration of this area, but are not generally considered to have significant weight or to be influential in changing practises within organisations. They do however provide a basis from which to progress.
- 4.22 In addition, the Socially Responsible Toolkit has a specific question about the impact of the procurement on different communities. This toolkit represents best practise and is used at the outset of all procurement exercises which go through the Procurement Unit.
- 4.23 **Specification** – Equality issues and considerations are built into the specification where they are relevant to the subject matter of the procurement. The relevance and proportionality of equality and diversity in the procurement is assessed on a case by case basis.
- 4.24 **Tender Evaluation** - there is an opportunity to consider specific equality areas when evaluating tenders
- 4.25 **Contract** – this currently includes express provision not to discriminate and also references the Code of Conduct. The code of conduct describes a minimum standard of general conduct that the council expects suppliers and contractors to adopt.
- 4.26 **Contract monitoring** – this refers to the performance management of the contract and currently includes reference to equality. More clarity at earlier stages would enable a clearer and stronger approach to ensuring that equality is progressed both in terms of contractors' employment practises and service delivery.
- 4.27 As shown above at each stage of the procurement process there is an opportunity for the contracting manager to consider equality, and this is often done to a high degree where direct provision of service direct to a client (particularly vulnerable clients) is concerned. However there is currently:
- a) no formal structure within which to ensure that this takes place,
  - b) reliance on an individual's personal knowledge of equality and diversity

- c) less account taken of equality and diversity where contracts do not involve service provision.

#### **4.28 Pilot Work**

- 4.29 Considerable work has taken place to understand how to influence the procurement and commissioning processes around equality. Appendix B gives examples of how this has been approached by other authorities/organisations.
- 4.30 There is currently a corporate Impact Assessment process which is used to consider the impact of decisions/service delivery on equality communities. This has been available for use to understand the implications of procurement and commissioning exercises, but there was no coherent approach which defined when to use it, within the procurement process. Whilst it gives the facility to fully ensure service delivery is in accordance with equality issues, and gives consideration to some aspects of employment, it does not take a robust influencing role which can be readily focussed on the different aspects of the procurement process.
- 4.31 Work was undertaken with Connexions West Yorkshire in 2007/8 to investigate the extent to which equality was embedded within the commissioning of their services. As a result of this work the Equality Assurance questions (Appendix C) were devised and piloted within the council. These were used alongside the impact assessment process to identify whether they provided additional/different information.
- 4.32 The pilots have taken place at the specification stage, and need to be tracked through to the contract and monitoring stages in order to draw final conclusions around the outcome of the process. However, initial indications are that the Equality Assurance process gives a structured approach to embedding equality and encourages a more rounded perspective than previously in place.
- 4.33 Appendix D gives an overview of the contracts which were used to pilot the Equality Assurance approach, and the changes made as a result of doing so. It is clear from this that the questions help prompt discussion and have resulted in changes being made to the specification and resulting tender questions. Whilst there have not been radical changes they have further emphasised the focus on all customers and their needs. The process has also promoted discussion and changes around equality performance management aspects of the contract.
- 4.34 The impact assessment process was also used and the results indicate that the 2 approaches result in similar outcomes, but there is a general consideration that the Equality Assurance questions have more face validity and are more focused than the Impact Assessment itself. In particular it also actively encourages more focus on the employment and performance management aspects of the procurement process.
- 4.35 Considerable discussion took place as to whether there was a role for both processes – one acting as an initial prompt and the other as a checking process. It was generally considered that the Equality Assurance was a speedier process and ensured that due consideration was given to equality areas to include within the specification. This could therefore be completed prior to the specification being drawn up, with the impact assessment, where appropriate, being completed

at a later stage. Depending on the nature of the contract it could be appropriate to do this in conjunction with the contractor.

4.36 Having ascertained that the Equality Assurance process adds value to further embed equality it is vital that the process is developed in an appropriate way, with due regard to proportionality etc. It is clear that the Equality Assurance process has most impact when looking at service delivery which is also the focus of the Scrutiny Inquiry and the Equality and Diversity Scheme. It is also clear that, other than in consideration of employment issues the Equality Assurance process is unlikely to make a difference to the overall outcome where contracts for goods are concerned.

4.37 As a result of discussions with managers involved in the pilot it is apparent to ensure proportionality that the Equality Assurance process should take place primarily for service related contracts. Appendix E gives a breakdown of where the process will have most impact. This includes some aspects of goods and works provision in so far as equality issues impact on them.

#### **4.38 Additional Tools**

4.39 In addition to rolling out the Equality Assurance questions there are a number of other Procurement tools which can be strengthened/introduced with regard to equality:

- a) Introduction of Equality and Diversity Account ie conduct equality training needs analysis for contractors via an online questionnaire based system, something similar to the CAESER system. and consider ways of addressing this via a supplier development programme. There is potential for regional funding for this.
- b) Encourage the use of voluntary employment schemes and link these to eg apprenticeships and Remploy. Although voluntary, non usage could be considered when reapplying for contracts,
- c) Procurement regulations strengthened with regard to use of equality assurance questions and/or reflection of impact assessment information,
- d) The non discrimination requirement currently embedded within the contract could formally become part of the contract monitoring requirements via eg asking for their equality policy and workforce breakdown. Guidance would need to be provided corporately to ensure that information was appropriately considered and used,
- e) Further influence could be in the form of voluntary schemes. The influencing could be in the form of increasing understanding and the business case for a diverse workforce, a voluntary scheme to increase representation, through to formally monitoring workforce diversity, with a view to setting targets etc.

#### **4.40 Next Steps**

4.41 To further embed equality in procurement there are a number of areas which can be taken forward/considered further. The first of these is the implementation of the Equality Assurance process. This needs to take account of:

- a) The most appropriate way to rollout the Equality Assurance process through eg inclusion in the SRP toolkit, publicising in the 5 in 5 newsletter, the Equality and Diversity Board, and the Performance Management Board.
- b) The different roles Impact Assessments and Equality Assurance can play in the procurement process
- c) Provision of guidance/briefing to support the Equality Assurance process. Procurement Unit can act as a 'reminder' to clients on the Equality Assurance and in working with the Equality Team on developing guidance that helps clients complete the assurance paperwork.

4.42 Further discussion and agreement needs to take place on the most appropriate way forward to influence contractors' employment practises, which promotes our legal equality duties and helps achieve our Equality and Diversity Scheme. The main options are to:

- a) effectively monitor the current contract requirement not to discriminate, which is in all contracts. This would require further development to ensure appropriate measures, proportionality and effectiveness
- b) encourage contractors to sign up to the voluntary approaches available.

4.43 Whilst initial work on the Equality Assurance process indicates that it is influential in embedding equality within the procurement process it is vital to fully evaluate the process following the full procurement cycle. This would need to be led by Procurement and involve the contractors, service managers and the Equality Team.

4.44 In developing this area a number of principles have been established as key to making changes in this area. These are listed at Appendix F. These are initial areas only and could be developed further based on the approaches adopted from this point on.

## **5.00 RECOMMENDATIONS**

5.01 Members of the Scrutiny Board are asked to:

- a) Note and discuss the content of this report with a view to identifying further information required and/or identifying recommendations

### Leeds City Council's approach to Equality and Diversity in Procurement

1. Leeds City Council's Corporate Procurement Unit support and include equality issues in the procurement process through a variety of 'tools'.
2. A guidance document entitled 'Equality, Diversity and the Procurement Process – how to address equality and diversity in the procurement process' has been produced, outlining the different methods of promoting and addressing equality and diversity issues in the procurement process as follows:
3. The PQQ (Pre Qualification Questionnaire) includes the prescribed questions which have been expanded to include all six equality strands and are also used in Approved List application form.
4. The contract documents are used to set out explicitly what the contractor is required to do, and this includes the relevance of equality to the contract. The requirements can be included in the specification, in the quality evaluation or a combination of the two.
5. Leeds City Council makes sure that, where appropriate, service users/customers are involved in designing, delivering and improving the services they receive by involving/consulting them in order to ensure that goods, works or services are designed around their needs. Service users are involved at the following stages:
  - Preparation
  - Specification
  - Shortlisting
  - Tender Evaluation
  - Post Contract Review
6. The following terms and conditions are included in all contracts that are awarded by the Procurement Unit (Consultant, Contractor, Supplier is interchangeable). Special terms and conditions can be included
  - The Consultant shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age & without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning & scope of the Sex Discrimination Act 1975, the Equal Pay Acts 1970 & 1983, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.
  - The Consultant shall take all reasonable steps to ensure the observance of the provisions of Clause 29.1 by all servants, employees, agents & consultants of the Consultant & all Sub-contractors.
  - The Consultant & any Sub-contractor shall adopt a policy to comply with its statutory obligations under the Race Relations Act 1976 &, accordingly, will not discriminate directly or indirectly against any person because of their colour, race, nationality or ethnic origin in relation to decisions to recruit, train, promote, discipline or dismiss employees.

7. Equality elements of the contract are subject to the normal contract monitoring arrangements. At present the council might also encourage the contractor to take on additional activities to promote equality of opportunity and good community relations. These would be wholly voluntary; they would not form part of the contract or be enforceable but could include:
  - Adopting an equal opportunities policy for their organisation
  - Monitoring the make-up of their workforce
  - Taking positive action, as permitted by law, to recruit under represented people
  - Promoting subcontract opportunities for small firms and ethnic minority businesses
  
8. All council construction contracts should be registered with the Considerate Constructors Scheme unless there would be no benefit to the citizens of Leeds. Leeds City Council is the 3<sup>rd</sup> most frequent user of the scheme behind the NHS and the Highways Agency. Objectives include:
  - Make positive considerations to the needs of site personnel, visitors, pedestrians, shoppers & neighbours. Special attention is to be given to the needs of those with sight, hearing & mobility difficulties.
  - Eradicate offensive behaviour on sites. Lewd or derogatory behaviour and language should not be tolerated under threat of severe disciplinary action.
  
9. Contractors code of conduct is available on the internet and the code of conduct describes a minimum standard of general conduct that the council expects suppliers and contractors to adopt. It is part of our standard Contract Terms and Conditions, Contractors who are in breach of the contract are dealt with by the Legal & Procurement Decisions group (LAPD) and could be closely monitored, suspended, or even barred from working for the council.
  
10. Contract Monitoring - When a contract is completed the contract manager is issued with a contractor performance report, and requested to report on the contractors' performance. Where unsatisfactory performance is identified the report can be submitted during the contract, via the Supplier and Contract Management System (SCMS) or using the Performance Report Proforma. Equal Opportunities is one of the areas that the contract manager is asked to report on. The current process allows a contract manager to make a general report on the contractors' equal opportunities but does not allow departments to report on a "contractor's service delivery by equality strand" as required by the ESLG. To help us achieve more detailed performance reporting, that enables departments to break it down by equality strand, the Procurement Unit has developed a Customer Satisfaction Survey.
  
11. Companies applying to do business with the council receive equal treatment, regardless of their identity, or perceived identity. Every year we monitor who is doing business with the council. We send all firms with a contract or on an approved list a questionnaire that asks them to identify the make-up of the owners and their workforce. This has been further developed in 2008 to ask about their recruitment and employment practices.

### Benchmarking approaches to equality in procurement

The following gives some examples of different approaches taken. There are more examples given in the Equality and Diversity Forum's document November 2008 'Public Procurement and Equality : steps towards a standard tendering framework'.

#### 1 The West Midlands Forum – Common Standard for Equalities in Public Procurement

- 1.1 The standard has been developed to fulfil legal obligations under legislation including the Race Relations (Amendment) Act 2000, which outlaws discrimination in all functions of local authorities, including procurement, and to ensure a greater awareness of equality legislation by contractors and their subcontractors

The Council will not award a contract to any supplier who breaches a race or any other equality standard observed by the Council

- 1.2 The Standard positively addresses and includes equality considerations in the selection and tendering processes. It helps organisations to formulate and introduce:

- equal opportunity policies
- anti-harassment/anti-bullying strategies
- fair and effective recruitment systems
- equality monitoring systems

- 1.3 Suppliers are asked to submit a written policy demonstrating that they comply with equality in employment legislation which is assessed against the standard consisting of two levels, corresponding to different sizes of firms. Details of suppliers approved under the standard are shared within the Forum. Firms need not be checked again for equality in employment legislation within a 3 year review period.

- 1.4 The West Midlands Common Standard is a proportionate approach dependent on numbers of employees. There is differing levels of evidence required for those organisations employing less than 5 people, between 5 and 49, and 50 and over. This varies from a written assurance that the Standard will be achieved if the organisation expands, to detailed evidence regarding employment practises including recruitment, training and monitoring, and steps being taken to address any disproportionality.

#### 2.0 Lewisham

Lewisham Council have developed a Pre Qualification Questionnaire (PQQ) for potential suppliers which includes a comprehensive section on Equality and Diversity.

Questions asked are broadly similar to the areas covered by West Midlands at this stage and includes whether equality monitoring of the workforce and applicants for employment takes place and a commitment shown to addressing under-representation

### **3.0 Transport for London's Approach to Supplier Diversity**

- 3.1 'Transport for London (TfL) policy statement is to 'proactively encourage Diverse Suppliers to participate in its procurement process for goods, works and services. It will provide a level playing field of opportunities for all organisations including Small and Medium Enterprises (SMEs), Black, Asian and Minority Ethnic (BAME) owned businesses and other Diverse Suppliers. TfL's procurement process will be transparent, objective and non-discriminatory in the selection of its Suppliers. TfL will actively promote Diverse Suppliers throughout its supply chains'.
- 3.2 Suppliers are required to prepare a number of plans, with detailed information as to what they should include:
- Diversity Equality Policy (Strategic Plan), which should include:
  - Diversity Training Plan
  - Supplier Diversity Plan
  - Communications Plan
- 3.3 Bidders for contracts with TfL develop their equality action plan and submit it. There is a preliminary assessment of submissions and feedback followed by bidders submitting their final action plan which is assessed on a pass/fail basis. This action plan becomes a part of the contract with the successful bidder. Once the supplier is selected then performance is reviewed on a regular basis as a part of contract management arrangements

### **4.0 Leeds Homes Construction Partnership – Leeds ALMOS – A Basic Equality Standard**

- 4.1 The equality standard enables contract partners to work to a baseline in addressing equality and diversity which covers all 6 equality areas. The framework sets out the minimum standards which contractors and supplier partners should commit to, and achieve, as part of their involvement with the Leeds Homes Construction Partnership or, indeed, other activities associated with Leeds City Council and its arms length companies (ALMOs). It has been devised using acknowledged good practice and should be achievable within a structured time scale. Participation in the standard is voluntary
- 4.2 An action planning process identifies key steps and milestones. These action plans should assist partners to move through from bronze to silver or from silver to gold. It is anticipated that each level should take twelve months to achieve and allow for the actions to be embedded into working practice.
- 4.3 The standard encourages all partner organisations to address equality and diversity in terms of employment (including user of sub-contracting agents), supplier of services and involved in customer relations in both diverse locations and with diverse needs, and Corporate Social Responsibility
- 4.4 The standard has been recognised as good practise by the authors of the Equality Standard However, the recent ALMO Inspection (Aire Valley Homes September 2008), whilst applauding the work undertaken using the Fine Metals Standards, were unconvinced about the outcomes associated with this



## **5.0 Calderdale Council's Passport to Equality & Diversity in Procurement**

5.1 The Calderdale Standard for Equality and Diversity in Procurement is a requirement for certain types of contract. The Standard is proportionate depending on the number of employees in a company and is based on a model developed and used by West Midlands Local Authorities and Kirklees Council)

## **6.0 Overview**

It is clear from the above that it is widely recognised that there is a positive impact on the wider community by including equality in the procurement process.

Whilst the advantages of adopting a robust approach to embedding equality and diversity in procurement procedures are apparent there are considerable resource implications associated with the introduction of a standard such as the West Midlands Common Standard and the Leeds Homes Construction Partnership.

There is also limited evidence of the outcomes that have been achieved by adopting the above approaches. It is vital that any approach adds value and is inherently part of the procurement process and not an additional resource intensive exercise

## Equality Assurance Questions

Conducted by:

### Overall Summary of outcome of conducting Equality Assurance

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In relation to **Service Users**, does/will the contract specification:

<p>A1 Identify broadly who the users are in terms of different equality groups Comment:</p> <p><b>Action:</b></p>
<p>A2 Identify the needs of different user groups and potential users Comment:</p> <p><b>Action:</b></p>
<p>A3 Ensure that the service covers the needs of different users in terms relevance and accessibility Comment:</p> <p><b>Action:</b></p>
<p>A4 Take account of any potential impact of the service/function on different sectors of the community and good community relations. Comment:</p> <p><b>Action:</b></p>

In relation to **Staffing**, does/will the contract specification:

<p>B1 Check the service is delivered by staff who understand the practical equality and cohesion considerations Comment:</p> <p><b>Action:</b></p>
<p>B2 Influence the contractor, and sub contractors, to employ open recruitment practises Comment:</p> <p><b>Action:</b></p>
<p>B3 Ensures provision of equality awareness training for staff, and sub contractors Comment:</p> <p><b>Action:</b></p>

In relation to **Performance Management**, does/will the contract specification:

C1 Include the need to have an equality policy which reflects the need to embed equality and diversity in employment and service delivery

Comment:

**Action:**

C2 Identify any equality monitoring requirements of users

Comment:

**Action:**

C3 Identify appropriate equality standards and targets

Comment:

**Action:**

C4 Ensure equality and cohesion considerations are taken into account in decision making in relation to resource allocation

Comment:

**Action:**

C5 Identify how improvements/changes are made based on the equality monitoring, consultation and complaints information.

Comment:

**Action:**

C6 Ensure where sub contractors/partners are used they take equality and cohesion considerations into account

Comment:

**Action:**

In relation to **Communication and Consultation** does/will the contract specification:

D1 Review the promotion of the service with a requirement to ensure specific initiatives to reach different diverse community groups

Comment:

**Action:**

D2 Ensure commitment to consultation with all diverse communities

Comment:

**Action:**

D3 Ensure that service users are involved in development/review of the service

Comment:

**Action:**

D4 Identifies information which needs to be passed to users and the methods in which this will be done, to ensure it meets the needs of diverse communities

Comment:

**Action:**

Tender Document	Level of contact with customers	Value	Impact Assessment and Outcome	Equality Assurance and outcome
Water cooler systems	None	£210k over 3 years	Not completed	No relevance of questions to contract. Noted that Code of Conduct which considers contractors behaviour, is part of the terms and conditions
Comment: Very quick process because not relevant as purely delivery of coolers- no real contact with anyone				
Information, Advice and Guidance	Significant	£3.5m over 3 years	Too late to make changes – so focus on where to look for evidence in submissions and further questions to explore	Fairly robust to begin with. Some gaps identified. Requirements made sharper and more focussed by process
Comment: EA done first. Different info obtained from each. Each took around 2 hours but EA felt quicker. IA gives customer Experience and EA focuses on organisational aspects. E A should be included for all procurement exercises through procurement checklist in Socially Responsible Toolkit (currently references IA process) Gave clarity by doing EA at early stage. Any mileage in doing EA individually and feeding into spec, with IA completed by the contracted service provider?				
LINKs	Significant	£270k for each of 3 years	Not completed due to time constraints, and as this was impact assessed as part of a national agenda	Fairly robust to begin with. Process gave opportunity to further develop some areas and to include additional information
Comment: Good exercise, fairly quick process which works well at the beginning of the procurement. Helps to make the spec people centred, and link equality issues to contract management. Simple form which provides good evidence that this area has been considered. Need to be clear about how effective the outcome of the EA is. Useful to use for all service delivery contracts and those with equality considerations – may have to tweak some of the wording to make sure appropriate.				
Passenger Transport Private Hire Procurement Process	Significant	£8m pa	Process recognised lengthy, complex documentation was a barrier and actions highlighted to minimise adverse impact of this	Impact assessment completed first. Equality assurance seen as duplication and not adding further value
Comment: The group was already familiar with the IA process and therefore found this easier and thought it worked well. Considered that the EA could be conducted before the specification stage in order to prompt thought, then the IA afterwards as a				

check. Neither process was considered relevant for the provision of goods.				
Housing Management orders	Potentially significant	No estimated value	Not completed	Enabled fine tuning of spec and ensured further focus on customer care. Added questions to tender process
Comment: EA useful process. Guidance and examples in relation to the questions would help. Standard wording for specific areas within the specification would also be welcome. Some confusion about terminology within the EA eg who are users? Concern that the procurement process is not made longer. Process much more appropriate for face to face delivery than for provision of goods				
Sheltered Housing	Significant	£1.8m pa	Barriers identified and addressed	Added very little following the IA, but highlighted a couple of areas
Comment: EA easy to understand. Useful and thought provoking. Provided lighter touch than the IA. EA could be improved by having a business case included at the top and turning questions into 'how'. Both processes useful and either could be used as a starting point with the other as a check. On balance considered EA useful to have at beginning of process and potentially, and reference IA guidance, and then have IA at a later stage completed by the contractor.				

<b>Examples of where Equality Assurance is Required</b>		
	<b>Yes</b>	<b>No</b>
<b>Services</b>	<p>Services provided directly to the public or sections of the public e.g:</p> <ul style="list-style-type: none"> <li>• enforcement and regulatory services</li> <li>• information and advice services</li> <li>• training providers</li> <li>• some research and consultancy services</li> <li>• collection of revenue/taxes/ duties/fines</li> <li>• transport</li> <li>• communication</li> <li>• care services</li> <li>• catering services</li> <li>• housing repairs and maintenance</li> </ul> <p>Also some employment focused services:</p> <ul style="list-style-type: none"> <li>• recruitment</li> <li>• staff training</li> <li>• occupational health</li> </ul>	<p>Corporate services where there is no direct service to the public e.g:</p> <ul style="list-style-type: none"> <li>• Operation of payroll system</li> </ul> <p>Some services which are provided to council staff:</p> <ul style="list-style-type: none"> <li>• IT consultancy</li> </ul> <p>Service provision where members of the public are not engaged</p> <ul style="list-style-type: none"> <li>• cleaning of premises or equipment</li> </ul>
<b>Goods</b>	<p>Goods that may require awareness of cultural, religious or communication needs: e.g:</p> <ul style="list-style-type: none"> <li>• uniforms</li> <li>• meals/catering</li> <li>• publicity/information leaflets</li> </ul>	<p>The purchase of routine stationery from a supplier that has already been approved by the Council as having met the minimum requirements.</p> <p>Goods that are delivered to public buildings – contractor staff may have limited contact with the public and/or council staff</p>
<b>Works</b>	<p>Construction/installation work on or around residential or community buildings or public places where an awareness of the needs of disabled people, communication, religious or cultural factors is needed. E.g. where contractors' staff will have direct regular contact with the public and/or with council staff.</p>	<p>Construction/installation work on council premises or sites where there will be no direct contact with the public or council staff.</p>

**Key Principles for embedding Equality, Diversity and Community Cohesion in**

1. Contract managers are involved in all aspects of the procurement process.
2. Contract managers need a good understanding of equality diversity and community cohesion agendas, particularly in connection with their specific service.
3. Procurement advisers need a good overview of equality, diversity and community cohesion principles.
4. Available impact assessment information should be taken into account at the start of the procurement process where it is established that the service/function involves significant contact with customers/service users. The Equality Assurance questions should be addressed as part of the process for service contracts and goods and works contracts where there are equality considerations.
5. Consideration to be given to including relevant stakeholders in the procurement process eg as a minimum members of the disabled community when procuring social care.
7. For all contracts the Pre Qualification Questionnaire (PQQ) includes equality related questions which covers all 6 equality strands.
8. The contract specification includes, as a minimum, equality requirements around employment and subcontractors.\*
9. Where appropriate the contract includes clear equality targets, which could include accessibility and satisfaction of services by all diverse communities.
10. Equality monitoring takes place in accordance with the requirements of the targets set and to enable workforce monitoring.\*
11. The contract management process includes specific questions relating to equality, diversity and community cohesion which reflects the areas covered within the contract.
12. The contract management process includes appropriate support to develop equality, diversity and community cohesion.

\* Subject to decision in connection with the most appropriate way to influence employment of contractors