

# Public procurement and race equality: Briefing for suppliers

Public authorities were recently given a legal duty to promote race equality in carrying out all of their functions. This has implications for their approach to procurement – affecting the way in which they specify their requirements, select the best bid and manage the contract.

The CBI and CRE have prepared this brief primarily for private and voluntary sector organisations that do business with the public sector. It indicates how race equality can be relevant to public procurement. It offers advice on how external providers can respond – in complying with legislation, demonstrating their competence and working with authorities to assess how best to achieve their objectives.

This brief also provides an insight for public authorities, including local government, into the perspective of their suppliers. It coincides with the launch of two detailed CRE guides for public authorities and contractors on race equality and public procurement: one relating to local government and the other addressing the rest of the public sector. This brief is not a summary of these guides. Rather it draws out key principles and good practice. Page four contains information about the CBI and CRE, including details of how to order the guides.

Under the Race Relations Act (RRA), all public, private and voluntary sector bodies – whatever their business – are required not to discriminate on racial grounds. Public authorities have an additional *duty to promote race equality*. The RRA recognises that promoting race equality will be more relevant to some public sector functions than to others. We see the following principles as key in relation to procurement:

- Race equality will be of greater relevance to the procurement of some goods, services and infrastructure projects than to others
- The more relevant race equality is to a particular contract, the more it must be considered at each stage of the procurement
- Race equality objectives must be considered within the context of achieving value for money and the obligation to follow European public procurement rules
- Value for money, race equality and service quality goals can be aligned if authorities apply sound procurement principles to the race equality and all other elements of the project. This means specifying requirements in output or outcome terms, allocating risks where they are best managed, ensuring that contractual payments are performance-based and scrutinising the competence of bidders
- There is a clear business case for good race equality practice. Public authorities should seek external partners who recognise this and have a public service ethos.



Public services should meet the needs of all our communities and help to create a just and inclusive society. Only then will they be world class.


Public authorities often choose to work in contractual partnerships with the private and voluntary sector for the provision of a wide range of services, infrastructure and goods. In these cases, effective procurement can help to improve service quality – and this includes more success in meeting the diverse needs of different racial groups.

Achieving race equality through procurement requires skill from public authorities and their partners. It also requires both partners to share a public service ethos and see the importance of socially inclusive wealth creation.

We hope that this brief will promote dialogue between the public, private and voluntary sectors, to reach a shared understanding how best to achieve the combined benefits of best value for money, truly responsive public services and social justice.



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## How race equality is relevant to public procurement

### Race equality as a core service requirement

Race equality will be relevant to most services provided directly to the public. Some services provided to the authority or its staff, eg catering or recruitment and training, will also be covered. So the scope is wide.

Public policy decisions to improve particular services or to invest in particular areas can achieve race equality alongside other benefits. Crucial implications for procurement arise where services need to be designed to be accessible and responsive to the specific needs of different racial groups. Such criteria should be reflected in the service specification – in terms of the required outputs or outcomes. The payment mechanism may even include incentives to reward particularly good performance. This is likely where the service provider is required to undertake some sort of positive action, for example to increase the extent to which particular racial groups use the service.

### Race equality in employment

Public authorities should check that potential suppliers are competent and committed to complying with employment legislation, including on race equality. Where race equality is a core requirement, further probing should test if bidders have the policies and expertise to meet contractual obligations to deliver an accessible and responsive service. These requirements fit within a broader policy framework to secure good handling of employment matters in public procurement – recognising the importance of people management skills in improving public services.

### Scope for achieving broader benefits through procurement

Wide-ranging partnerships can offer more scope than narrowly drawn contracts to achieve broader race equality goals alongside core service delivery objectives. For instance, a small-scale contract to perform minor housing repairs may not enable or motivate a contractor to create local jobs. But a long term, wide ranging PPP deal for economic and social regeneration of a housing estate might well do so, particularly if the partnership included support from local employment and training agencies.

### An impetus to widen the supply base

As public authorities make their services more responsive to the needs of different racial groups, they should attract interest from Ethnic Minority Businesses (EMBs) and voluntary organisations with relevant expertise. Larger firms

may also see competitive advantages in partnering with such organisations when bidding for public contracts.

Public authorities cannot discriminate in favour of any particular organisation. However, the duty to promote race equality and the benefits of attracting a diverse supply base should motivate public authorities to make sure that their procurement processes do not deter EMBs, small firms and other specialists from bidding.

### The relevance of race equality – some examples

A street lighting contract gave priority to badly lit housing estates with high crime rates and residents who worked anti-social hours. These areas had large ethnic minority populations.

A contract for police helmets specified the provision of cloth of identical colour and insignia for Sikh officers' turbans.

A contractor providing heating systems had to provide manuals in community languages.

A contract to operate mobile neighbourhood information centres included a requirement to reach Gypsy families and encourage them to make more use of local services.

A catering contract included bonus payments for increasing the take-up of free school meal places, which particularly benefited ethnic minority families.

A care for the elderly contract required the workforce to have community language skills and an understanding of religious and cultural needs of their clients.

A contractor offered to provide prayer rooms in sites with Muslim staff.

A PPP contract involved major IT investment to automate various process, thereby reducing the number of people required to do the work. The authority sought a private sector partner who could mitigate this and create more local jobs, by bringing in third party work. The contractor also signed up to meeting demanding workforce diversity targets.

A Chinese community centre provided specialist training on language and culture to the police, to help them in tackling crime targeted on the Chinese community.

An authority helped small businesses to acquire the skills to compete for its contracts by providing training and networking.

## Competing for public authority contracts

How well an authority plans and manages its procurement is fundamental to its success in meeting race equality and other objectives. The authority creates the framework within which bidders can prepare bids and demonstrate their competence. Bidders should respond positively to race equality aspects of any procurement. Here are some suggestions on how they can do this.

### Deciding whether to bid

Tendering for public contracts is costly. Contractors increasingly judge the competence of an authority as a client before deciding to bid. This includes assessing whether the authority has clear goals (key outputs and outcomes) and, where there is scope, encourages bidders to put forward their own ideas about how these can be achieved. Bidders should look for this approach to race equality. They should be willing to explore with clients how to achieve these and other social benefits through contracts that also make good commercial sense.

### Early and ongoing dialogue with public authorities

Public authorities increasingly consult businesses and voluntary organisations when planning procurements to gain access to different perspectives and experience, including in the field of race equality. Early contact cannot offer any advantage in the tendering process but has enormous advantages for bidders and public authorities. For more complex contracts, there is also scope under European rules for dialogue and negotiation during the procurement process.

In certain circumstances, dialogue can help contractors and clients to reach a common understanding from the outset of what might be achievable in all areas, including race equality. Contractors or potential contractors need to be clear at an early stage about what they can realistically deliver in terms of race equality and what the cost implications may be. They should then discuss the possibilities for meeting the challenges with the public authority, so that procurement decisions are well informed and soundly based.

Dialogue also improves the authority's understanding of the partnering models and contract structures that will deliver the best result. Key issues include how to specify requirements, allocate risks between the parties, give the contractor the freedom to manage its risks and how the payment mechanism can hold the contractor to account and reward good performance.

For example, in a contract providing English lessons for refugee homeless families, an authority might use different payment mechanisms depending on its objectives. If its objective were around take-up of lessons, it may pay the service provider on the basis of number of students. Alternatively, if its objective were around educational attainment, payment may be based on exam results. And it could improve the prospects of success either way by publicising the lessons and not re-housing the families to another area, mid-way through the course.

Dialogue is crucial where the authority wants to explore the feasibility of achieving wider race equality goals alongside service improvements. For example, suppliers may find it easier to create jobs if the contract ran for longer, if the schedule for improving the service took account of the time needed to train people or if programmes designed to help people into work were integrated into the package.

### Demonstrating competence as a supplier

Public authorities will need to evaluate the competence of suppliers as well as the detailed proposals in their bids. Procurement is typically a two-stage process: firstly the authority will select the organisations that they judge competent to submit a bid and then these organisations will prepare and submit their tenders for evaluation.

Given the duty on public authorities to promote race equality, they will naturally wish to select bidders that do not have a history of discrimination in employment or service delivery. The extent of scrutiny will depend on the contract.

Contractors will need to demonstrate that they understand their responsibilities under the RRA and operate within the law. They should expect to be asked if a court, tribunal or formal CRE investigation has recently made a finding of discrimination against them. If so, they should explain what steps have been taken to prevent discrimination recurring. Public authorities should look favourably on organisations that can show they have improved their policies and processes following a negative ruling.

Where race equality is a core requirement of the procurement, contractors may be asked for additional evidence of good race equality practice, both in terms of their employment and customer service. Relevant evidence might include copies of race equality and other employment policies, recruitment procedures, training and development opportunities, copies of leaflets for customers and proof of previous success in delivering services to hard-to-reach communities.

In assessing the answers and any evidence, public authorities should take account of the scale of the proposed contract, the degree of relevance to promotion of race equality, and the size and experience of the contractor.

## Preparing a bid

Bidders should gather as much information as possible about the context for meeting race equality objectives within the contract. This should include the authority's race equality scheme or policy, facts about the population to be served by the contract, current levels of use by different race groups and an insight into the key challenges in improving performance.

Where staff will transfer under TUPE, bidders will need information about their terms and conditions, including protection against discrimination and rights to equality of opportunity. They should also meet trade unions and staff who would transfer.

Bidders should seek clarity on how tenders will be evaluated. Clients should be seeking the bid that offers best overall long-term value for money (or, using European public procurement terminology, the 'most economically advantageous tender'). The invitation to tender should list the specific evaluation criteria, including those relating to the promotion of race equality.

## Delivering the service

Once a contract has been awarded, the public authority and contractor will need to agree how to manage their relationship and review performance, including on any race equality requirements. Particularly for strategic partnerships, governance arrangements could include a direct role for service users and other stakeholders, including representatives from key community groups.

Public authorities will wish to hold their contractors to account for meeting their race equality obligations. Contracts are likely to include a condition that the contractor must not discriminate unlawfully under the RRA, or under all current equality legislation. Other likely clauses will require the contractor to meet certain standards of behaviour when their employees work on the authority's premises or come into contact with the authority's staff or the public.

The contract will include clauses that relate to any specific service requirements, for example to increase usage of the service among particular racial groups. Where the authority and the contractor have agreed to exploit the scope to achieve wider race equality benefits – for example to create employment or improve diversity – contractual clauses will reinforce the agreed obligations and contributions from both parties.

Contractors and clients should agree contractual terms which reflect the key principle that while authorities can demand certain levels of performance, they should not micro-manage contractors but allow them freedom to innovate. And clearly attention must be focused on what is really important – not inputs but outputs and not words but action.

## The business case for good equalities practice

Any organisation that delivers public services – whether in the public, private or voluntary sector – needs to have a public service ethos. Taking a positive approach to race equality is one component. There is also a strong business case for adopting good practice – and not just because of the cost and damage to reputation from losing a discrimination case. Employer surveys show that, where employment is rooted in equality of opportunity, productivity increases. Developing a diverse supply chain can enable contractors to meet varied demands and customer expectations. And when an organisation strives to be responsive and accessible to all service users, everyone benefits.

## Further information

### The Commission for Racial Equality

The CRE works in partnership with individuals and organisations for a fair and just society which values diversity and gives everyone an equal chance to work, learn and live free from discrimination, prejudice, and racism. Two new CRE publications – *Race Equality and Public Procurement* and *Race Equality and Procurement in Local Government* – provide detailed guidance on these issues for the public sector and its partners. Details of how to order these can be found on the CRE website.

Contact: [www.cre.gov.uk](http://www.cre.gov.uk)

### The CBI

The CBI's objective is to help create and sustain the conditions in which the UK can compete and prosper. It advocates good equality practice to business and argues for legislation that ends discrimination and is sensitive to commercial realities. *The CBI statement of intent on improving public services through PPP* outlines the business interest in public services and the CBI commitment to PPPs that put the citizen and service user first.

Contact: [www.cbi.org.uk](http://www.cbi.org.uk)

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