

# Procurement and the public sector equality duty: A guide for public authorities (Scotland)



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## 1. Introduction

### 1.1 Context for this guide

This guide is one of a series written by the Equality and Human Rights Commission (the Commission) which gives advice on how to meet the public sector equality duty. It will help public authorities to comply with their legal duties under:

- The Equality Act 2010, Section 149, and
- The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012

However, this is not a definitive guide to the law and if you are unclear about what the law allows or requires, you should seek legal advice.

The Equality Act 2010 (the Act) harmonises and replaces previous equalities legislation and also includes a new public sector equality duty which replaced the separate duties relating to race, disability and gender equality. The public sector equality duty came into force on 5 April 2011.

To support Scottish public authorities in meeting their equality duties, the Commission has produced **non-statutory guidance** which provides an overview of the public sector equality duty, including the general equality duty, the specific equality duties and who they apply to:

1. *Essential guide to the public sector equality duty*
2. *Equality outcomes and the public sector equality duty*
3. *Evidence and the public sector equality duty*
4. *Involvement and the public sector equality duty*
5. *Assessing impact and the public sector equality duty*
6. *Mainstreaming the equality duty*
7. *Employee information and the public sector equality duty*

*The Essential guide* gives an overview of the requirements of the public sector equality duty. The other documents provide additional practical advice.

**Further information** can be found on the public sector equality duty section of the Commission's website: [www.equalityhumanrights.com/scotland/public-sector-equality-duty/](http://www.equalityhumanrights.com/scotland/public-sector-equality-duty/)

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## 1.2 Who this guide is for

The guide aims to help public authorities subject to the public sector equality duty to implement the duty as it relates to procurement. It is aimed at budget holders, procurement officers, contract managers, commissioners, equalities officers and others involved in the procurement process. It assumes some technical knowledge of procurement.

The guide will also assist those who have an interest in the work of public authorities such as service users, service providers, unions, and equality organisations.

## 1.3 Content of this guide

This guide:

- Explains the obligations within the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 on listed authorities to consider the use of award criteria and conditions in relation to public procurement
- Explains how to comply with those obligations through the various stages of the procurement process

This guidance is for public authorities in Scotland. Separate guidance is available for public authorities in England (and bodies with non-devolved functions in Scotland and Wales) and public authorities in Wales. This guide was last updated in June 2013. Please check our website to see if it has been replaced by a more recent version.

## 1.4 A note on terminology

This guidance uses the term ‘policy’ as shorthand for any activity of your organisation. Therefore ‘policy’ should be understood broadly to embrace the full range of your policies, provisions, criteria, functions, practices and activities including the delivery of services – essentially everything you do.

This guidance uses the term 'equality groups' to mean 'persons who share a relevant protected characteristic' and where reference is made to 'equality groups and communities' this includes 'any person who appears to the authority to represent the interests of those persons'.

This guidance refers to the three parts of the general equality duty (as outlined in Section 2) as the three 'needs'. When we discuss the general equality duty we mean all three needs.

## 2. Legislative context

The public sector equality duty came into force on 5 April 2011 and requires public authorities, in the exercise of their functions, to have **due regard** to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Equality Act 2010
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not

To have 'due regard' means that when making decisions (and in its other day-to-day activities), an authority subject to the duty must consciously consider the needs of the duty. How much regard is due will depend on the circumstances and in particular on the relevance of the aims of the general duty to the decision or function in question. For further information about due regard, refer to the *PSED Technical Guidance for Scotland* which is available on the EHRC website.

The relevant protected characteristics covered by the duty are;

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

The general equality duty also covers marriage and civil partnerships, with regard to eliminating unlawful discrimination in employment only.

## Who does the general duty apply to?

The general equality duty applies to public authorities listed in Schedule 19 of the Act together with those listed in the Equality Act 2010 (specification of Public Authorities) (Scotland) Order 2010, in respect of all their functions, unless otherwise specified. The general equality duty also applies to private or voluntary organisations when carrying out public functions. The Equality Act defines a public function as a “function of a public nature for the purposes of the Human Rights Act 1998”. An example of this would be a private security company running a prison. The company would, however, only be covered by the general equality duty with regard to the public function being carried out, but not for other work, such as providing security services for a supermarket.

## Non-delegable

The duty is non-delegable. This means that the duty will always remain the responsibility of the organisation subject to the duty. In practice, this may mean that public authorities need to ask their suppliers to take certain steps such as monitoring service users, in order to enable the public authority to meet their continuing legal obligation to comply with the duty.

## The Specific Duties

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 came into force in May 2012. The purpose of the specific duties is to help those authorities listed in the Schedule to the Regulations in their performance of the general equality duty. This guidance explains the requirements of the *duty to consider award criteria and conditions in relation to public procurement*.

For more information about the other specific duties please refer to the *Essential guide to the public sector equality duty* on our website.

### 3. What does the specific duty on procurement require?

#### **Duty to consider award criteria and conditions in relation to public procurement**

Where a listed authority is a contracting authority and proposes to enter into a relevant agreement on the basis of an offer which is the most economically advantageous, it must have due regard to whether the award criteria should include considerations to enable it to better perform the equality duty.

Where a listed authority is a contracting authority and proposes to stipulate conditions relating to the performance of a relevant agreement, it must have due regard to whether the conditions should include considerations to enable it to better perform the equality duty.

Nothing in this regulation imposes any requirement on a listed authority where it would not be proportionate to the subject matter of the proposed agreement.

In this regulation:

- (i) “contracting authority”, “framework agreement” and “public contract” have the same meaning as in the Public Contracts (Scotland) Regulations 2012(1)
- (ii) “relevant agreement” means a public contract or a framework agreement that is regulated by the Public Contracts (Scotland) Regulations 2012.

A listed authority is required to comply with the specific duty in relation to public procurement if it meets the definition of a contracting authority under Regulation 3 of the Public Contracts (Scotland) Regulations 2012<sup>i</sup>.

The specific duty on public procurement also only applies when a listed authority awards a contract or framework agreement which is covered by those Regulations. They also do not apply to below-threshold procurements<sup>ii</sup>.

However, below-threshold procurements, all public authorities covered by the Equality Act 2010 remain subject to the relevant principles flowing from the Treaty on the Functioning of the EU Treaty Principles<sup>iii</sup> and the general equality duty. Therefore, following this guidance may help a public authority meet its broader legal obligations in regards to procurement and equalities whether or not it is covered by the specific duty.

### **When to apply equality to award criteria and conditions in relation to public procurement?**

To meet the requirements of the specific duty, a public authority must be able to demonstrate that it has had due regard to whether the award criteria and conditions relating to the performance of a relevant agreement should include considerations to enable it to better perform the equality duty.

Applying 'due regard' means that when making decisions about procurement, an authority subject to the duty must consciously consider the need to: eliminate discrimination, advance equality of opportunity, and foster good relations.

Any award criteria or conditions related to the performance of a relevant agreement must, in accordance with the Public Contracts (Scotland) Regulations 2012, be related to and proportionate to the subject matter of the contract or framework agreement. If the needs mentioned in the general equality duty are not related to the subject matter or relevant agreement you are dealing with then a listed authority will not be subject to the specific duty on procurement in respect of that agreement.

Deciding whether or not equality is related to the procurement exercise will require an assessment of how the subject matter relates to the needs of the general equality duty.

How public authorities establish the degree of relationship will vary according to the individual procurement but will be shaped by the value, scale and potential impact of the agreement and other factors such as level of contact with the public or the authority's workforce.

Proportionality relates both to the level of regard due and to any award criteria and conditions relating to the performance of a relevant agreement.

They should be proportionate to the degree of relationship between equality and the subject matter. For example, decisions a local authority makes about the provision of social care for older people compared to those regarding the purchase of road maintenance materials, is related to the aims of the duty, and so it will need a higher degree of due regard.

## 4. Meeting the specific duty requirements during the procurement process

This section looks at the considerations required for relevant agreements through each stage of the procurement process. The relationship to the equality duty and proportionality, as outlined above, are the key guiding principles for meeting the requirements of the duty during the procurement process.

In applying the specific duty in the procurement process of a listed public authority, it will be important to keep in mind that the specific duty for public procurement is two-fold:

**Award criteria:** When a listed authority proposes to award a contract or framework agreement on the basis of the most economically advantageous offer, it must have due regard to whether the award criteria should include considerations to enable it to better perform the general equality duty.

An offer which is the 'most economically advantageous' is one offering best value for money based on whole life costs and the quality offered to meet user requirements. The specific duty in relation to public procurement does not therefore apply to contracts awarded on the basis of lowest price only. When assessing whether an offer is the most economically advantageous, a listed authority will need to assess the bids it receives on the basis of pre-published award criteria.

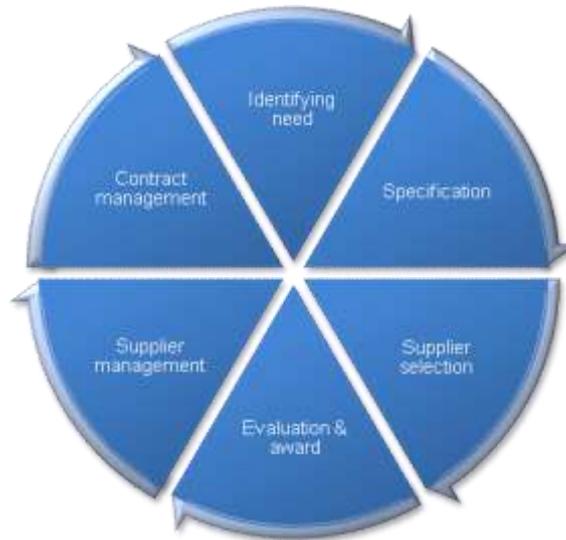
**Conditions relating to the performance of a relevant agreement:** When a listed authority proposes to stipulate performance conditions in a relevant

agreement, it must have due regard to whether the conditions should include considerations to enable it to better perform the equality duty.

Decisions about award criteria should be made early on in the procurement process. If equality requirements are identified, these can be written into the specification as award criteria. This is also the case for performance conditions - an authority can propose to stipulate performance conditions relating to equality in its contract with a supplier.

Additional reference material, including the Scottish Government's online guide the *Procurement Journey* and further reading are listed in the resources section.

## The Procurement Process



### 4.1 Identifying need

Identifying need is the first stage of any procurement activity. You should consider equalities when assessing procurement requirements before re-tendering and for new contracts. Such assessments must be carried out on a case-by-case basis, and consider **all** relevant **protected** groups.

While such assessments should be carried out on a case-by-case basis, some systematic methodology will be useful for developing your understanding of potential impacts. While there is no prescribed methodology for including equalities considerations within a needs assessment, useful questions may be:

- Do current arrangements adversely affect people with protected characteristics or unlawfully discriminate against them?

- Are there indicators available, such as service take up or satisfaction levels, which imply any disadvantage or discrimination among any of the protected groups, or that the service does not meet their needs? If so what do they tell you?
- If there are no indicators available should these be developed?
- Are there changes you could make to what you buy, or how you buy it, which could help eliminate discrimination, advance equality and foster good relations?
- Are there demographic changes that might create or shape new needs?
- If there have been changes to the service or related resources are these likely to have affected any protected groups disproportionately?

In considering whether specific equalities related award criteria and performance conditions should be included, and in the development of these, it will be useful to involve specialist equalities staff.

Once you have determined your need and decided the relationship of the procurement requirement to equality issues, you can choose to set specific equality award criteria. You can also choose to use the contract specification to set out conditions related to the performance of a relevant agreement which state explicitly how you require the contractor to perform. You have wide scope in drafting contract specifications with the requirement being to ensure that they are legal and non-discriminatory.

**Example:** The collaborative Occupational Health Service tender and framework agreement led by the Scottish Prison Service includes conditions related to supporting employees return to work. As part of this, the contract specifies conditions regarding the management of disability issues, for example, where the service provider may be asked to make recommendations for reasonable adjustments within the workplace (see resource section).

## Specifying positive action and reasonable adjustments

The Equality Act 2010 recognises that improving equality for people who share a protected characteristic may sometimes require that they be treated more favourably than others who do not share that characteristic. The Act allows employers or service contractors to take positive action measures to improve equality for people who share a protected characteristic. Positive action means that support can be provided to people who are underrepresented in order to encourage them to access services or employment opportunities. For example, a community health service might be provided for gypsies and travellers to close a significant life expectancy gap relative to other groups.

The Act also requires that reasonable adjustments are made to meet any needs arising from a person's disability. It also includes a duty to make anticipatory reasonable adjustments. This requires listed authorities to take positive steps to ensure that disabled people can access services, public functions and have access to and can progress in employment. This includes making changes to the built environment or providing auxiliary aids to make a service accessible.

## Involvement

Using local knowledge and engaging with service users and networks of people with protected characteristics will help you to understand the needs and requirements that different people might have. You may be able to use relevant evidence and information from a current service provider or officers managing the contract. Unions and employees may also provide useful information about equality issues in employment. You will then be able to assess the potential impacts of the procurement activity and be able to demonstrate how you have met the needs of the general equality duty.

## Reserved contracts

When developing award criteria you may also wish to consider whether it would be appropriate to reserve a contract so that only *supported businesses, employment programmes and factories* can bid for it. Regulation 7 of the Public Contracts (Scotland) Regulations 2012 describes supported businesses as “... *companies with more than 50% of their workers being disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market.*”

The Scottish Government Guidance Note on Social Issues in Procurement suggests that;

*“Every public body should aim to have at least one contract with a supported factory or supported business.”*

In support of this policy, the Scottish Government established a reserved Framework Agreement providing all Scottish public bodies with an easier route to contracts with selected supported businesses, goods and services. It is best practice to consider as a matter of course whether the reserved contracts process should be followed.

## Business case

The business case should demonstrate how the procurement activity will take account of the public sector equality duty and show legitimate and reasonable need.

To identify need you should begin by reviewing current provision before re-tendering. There is no prescribed methodology for doing this, but a systematic assessment of the impact of equality to the procurement should assist in determining the degree of relevance.

**Assessing potential impact will help shape your business case for the procurement. Other issues you may consider when building your business case include:**

- **Risk** - Consider any legal, financial, reputational or even political risks that may be incurred by yourself and potential suppliers. Non-compliance with the general equality duty may lead to legal challenge and affect your authority's reputation as well as incur financial costs
- **Strategic Fit** - Does the inclusion of equality measures add value to, and help meet, your authority's vision including its stated equality outcomes?
- **Options** - What procurement options are available to you and how might they impact on your performance of the duties?

Considering all of the elements of the business case will give you a clearer understanding of the impact the procurement activity might have on equality groups. It will help you demonstrate the need for inclusion in terms of compliance, value for money and delivering wider benefits to the community than may have originally been considered.

## **4.2 Specification**

Once you have identified the needs for your procurement activity and established a business case, you will have determined where equality is a requirement, and you can then use the specification to set out explicitly what you require the contractor to do.

This is the point where the specific duty for procurement requires you to have due regard to whether award criteria and/or conditions related to the performance of a relevant agreement should include considerations to enable the better performance of the equality duty.

You should include any equality related award criteria within the specification and weight these criteria as you see fit.

## Types of specification

### Outcome (functional specification)

You can ask a contractor to meet specific equality conditions but leave it to them to set out in their tender how they propose to achieve these. An equality outcome is a result which you as an authority aim to achieve in order to further one or more of the needs mentioned in the general equality duty. In practice, you might find it helpful to think of equality outcomes as results intended to achieve specific and identifiable improvements in people's life chances.

Outcome specifications can be drafted to include measurable outcomes, for example, the specification could require year-on-year improvements.

**Example:** A health organisation has set an equality outcome to reduce the life expectancy gap between men and women. The organisation's research showed that single men, and particularly gay men, over the age of 50 are less likely to consult a GP than women.

The Invitation to Tender (ITT) for a community health communications contract specified improved outcomes in male health and asks bidders to describe how they would deliver this outcome.

The successful contractor proposed identifying local pubs used by single older gay men and distributing posters along with beer mats with health information and advice about seeing a GP. This led to improved attendance at GP surgeries by this group which aided progress towards the equality outcome.

## Output (performance specifications)

Output specifications dictate what outputs are needed to meet the desired outcome. If you know that some of the communities you serve are particularly disadvantaged because of distinct service needs related to their protected characteristic, you can write certain conditions into the contract specification which will help meet those needs and help you better perform the general duty. These could include providing services to meet special educational, training, dietary or welfare needs of particular equality groups.

**Example:** The Scottish Parliament<sup>iv</sup> catering contract required several things: menus providing specialised medical, ethnic and religious meals; that tables and menus were accessible; that staff were adequately aware and trained to be aware of the diverse needs of users, provide equal access to services and to communicate effectively with customers (for example communicating with a deaf person, assisting someone in a wheelchair, or assisting someone who is blind or partially sighted).

## Input (technical specifications)

The contractor can prescribe specific input or technical requirements in the goods, works or services. The EU Directive and Scottish Regulations, for example, require public authorities, in drafting any technical specifications, to take into account accessibility criteria for people with disabilities or the suitability of design for all users.

For example, the authority might be expected to specify full compliance with relevant UK access standards such as BSI 830015 in relation to building construction or BS PAS 7816 in relation to website design.

## **Specifying workforce requirements**

When equality is a core requirement, or judged as highly relevant to the contract, how the contractor recruits, trains and manages the workforce delivering the contract may be relevant to overall performance of the contract.

**Example:** Three local authorities agreed to set up a shared call centre in a remote new site. Consultation with employees and unions identified that the long commute was difficult for carers and disabled employees. The contract specification included award criteria which required potential suppliers to demonstrate willingness to allow flexible and home working to mitigate for potential negative impact on carers and disabled employees.

## **Obligation to monitor**

If you specify the achievement of certain performance targets, such as in the example above which sought increased attendance at GP surgeries by older gay men, you may want to make explicit how you expect the contractor to monitor their performance against these targets. For example, you may consider specifying equality monitoring of people who use the service but also consultation with those who don't use the service. You may also make it a requirement for the contractor to make adjustments in light of the monitoring results.

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

## **Verifying and monitoring specifications**

Consider at this point how you will evaluate these aspects and score them according to their importance within the overall evaluation. You should be able to verify, monitor, and evaluate whatever you specify.

This means any performance conditions on promoting equality, like the rest of the specification, should be objective, and stated in terms that are clear and explicit.

### **Terms and conditions**

Introducing special equality conditions within the contract can help you meet your legal obligations under the Equality Act, and help ensure your suppliers meet their legal obligations. Such conditions will vary considerably depending on the procurement requirements, but you should ensure that equality conditions are relevant to the requirement, clearly set out and achievable.

### **Preparing the contract notice**

The contract notice should clearly set out any specific equality related conditions related to the performance of the relevant agreement and business goals so that any potential supplier can understand them.

The contract notice should also state whether the organisation awarded the contract will be carrying out public functions, and make clear that it will subject to the general equality duty.

**Example:** A further education college has a sports centre which it contracts with a private company to run. There are specified actions and targets within the contract for increased usage and satisfaction by disabled people. Within the contract notice the college requires the company to monitor the number of disabled people utilising the various sports facilities and the satisfaction levels of disabled people. The college will review the performance data on a regular basis, and if targets are not achieved there is a facility for the college and the contractor to agree further actions to encourage disabled people to use the centre.

The Public Contracts Scotland portal can be used to manage the OJEU notice and other procurement contract notices

<http://www.publiccontractsscotland.gov.uk>

## 4.3 Supplier selection

### Assessing contractor technical capacity and ability

The next step may include use of a pre-qualification questionnaire (PQQ) or another supplier selection process such as a supplier portal.

The PQQ provides a good opportunity to find out about a potential supplier's track record on equality. It can also assist you with your responsibility to assess the potential supplier's ability to comply with the general equality duty if it will be carrying out a public function.

A standardised PQQ has been designed under the Scottish Government's Public Procurement Reform Programme to aid both suppliers and buyers (see resource section). The standard PQQ requests information about;

- equality performance and compliance with the Equality Act 2010
- equal employment opportunities and compliance with employment law
- supporting evidence such as copies of policies and procedures

The PQQ is the appropriate point to ask for evidence of liability in discrimination claims or breaches of national laws about equal treatment of workers. You should consider the nature and gravity of the breach, when it took place, and the degree of relevance to the subject of the contract itself. You may exclude a prospective tenderer who has had a complaint upheld against them unless they can show they are taking steps to remedy the issue.

The PQQ also asks about a potential supplier's technical ability to perform the contract. This usually includes the supplier's professional and technical ability, as reflected in its staff qualifications or training, and its track record in performing similar contracts.

#### 4.4 Invitation to tender

An invitation to tender (ITT) should set out the requirements as identified in the business case. It provides you with an opportunity to specify any equalities related award criteria developed in accordance with the specific duty.

All equality related award criteria in an ITT should be objective, and stated in clear, explicit terms and may relate to the;

- statutory obligations of employers
- desired outcomes or outputs from the contract
- technical or workforce requirements

You can inform suppliers that they are required to comply with the Equality Act 2010 if awarded the contract.

You must specify within the ITT the award criteria you will use for each aspect of the tender and detail the relative weighting applied to these aspects. The award criteria may include equality-related criteria, or combine equality factors with quality, technical merit and cost-effectiveness criteria.

The ITT can include method statements to ask how the supplier intends to meet equality related award criteria. In higher risk areas such as social care, asking 'open' questions should enable a much more meaningful assessment of the contractor's approach, than a 'closed' tick box type approach. You can also ask how contractors will cascade equality requirements through their supply chain.

**Example** Scotland Excel's standard conditions require that *'If the Contractor enters into any subcontract in connection with the Contract, it shall impose obligations on its subcontractors in proportionate and relevant terms substantially similar to those imposed on it.'*

## **Contract award**

A relevant agreement should be drawn up once a suitable supplier has been identified. The process for this stage will vary depending on your organisation. However, if equality related award criteria were identified earlier in the process then these should be refined as 'conditions' within the contract.

**Example:** A local authority has awarded a works contract for the construction of a new leisure centre. The works involve plumbing, carpentry, brick-laying, plastering and decorating. The local authority is aware that, in all these trades, women are under-represented. It includes a condition in its contract that the contractor or sub-contractor must be able to demonstrate that as an employer it is actively taking steps to encourage women to take up its apprenticeships.

## **4.5 Supplier management**

The responsibility to comply with the general equality duty remains with the public body after the award of the contract and continues throughout the whole of the contract performance. Therefore the monitoring and management of the contract and the supplier should be considered in relation to delivering the specific duty, identifying negative impacts and learning lessons for future contracts.

As part of your continual improvement agenda, you may seek to improve the equality performance of suppliers in a way that goes beyond their contractual obligations.

This would help fulfil the need to advance equalities under the general duty. For example a public authority may work with its suppliers to improve their equality and diversity policies and practices and to share best practice among them.

#### **4.6 Contract Management**

Monitoring the contract is critical and requirements should be designed to assess your specified equality award criteria and performance conditions for that contract. The value of the contract will determine the level of monitoring required but monitoring the contract will allow you to:

- ensure successful delivery of a contract
- develop an understanding of a service and facilitate the adaption of it to meet the needs of all users
- demonstrate due regard to the equality duty, and
- meet specific duties to report on progress towards its published equality outcomes and to assess and review the impact of its policies and practices

#### **Termination, exit and learning lessons**

Finally, sometimes things go wrong. If, during the delivery of the contract, your monitoring finds that equality conditions set out in the contract are not being met, you should discuss this with the supplier and agree steps to rectify this. A serious breach may mean you need to use sanctions provided for in your contract.

## 5. Resources

### 5.1 Scottish Government resources and guides

Through the Public Procurement Reform Programme, a number of tools have been developed to assist best practice in public procurement. These tools, including a Scottish Pre Qualification Questionnaire, are available via the Scottish Government website

<http://www.scotland.gov.uk/Topics/Government/Procurement>

### 5.2 Case Studies

#### Case Study 1 – Scottish Prison Service, Occupational Health Services

The Scottish Prison Service (SPS) was the lead procurement organisation for a collaborative Occupational Health Service tender and framework contract covering approximately 78 central Scottish Central Government organisations with circa 24,000 employees. A User Intelligence Group (UIG) comprising Human Resource representatives from 5 representative organisations was formed to consider lessons learned from the existing arrangements, develop the contract strategy, specification and tender evaluation criteria.

Key considerations included ensuring the availability of occupational health services which appropriately support HR teams to deal with sensitive healthcare issues, including: those related to pre-employment medical screening; return to work (including any recommendations for staged return) after accident, injury, or stress related absences; medical severance or ill health retirements; drug or alcohol abuse; workplace assessments; management of work place stress, etc.

The contract also specifically supports management of disability issues, for example, where the service provider may be asked to make recommendations about reasonable adjustments within the workplace.

As a person-centred service, management of equality & diversity matters by suppliers was specifically evaluated and scored with tenderers being asked to evidence how they deliver services including to '*... groups with protected characteristics, recognising different health and wellbeing needs, all in a sensitive & appropriate manner across the range of workplace situations*'.

Accessibility to the services was also amongst factors assessed, for example:

- clinic sites' ability to accommodate disabled groups
- facilities to support persons with hearing or visual impairment
- facilities to support those individuals who required translation services

The tender also tested what training (including equality & diversity) and management oversight existed within the organisation to embed and support equality & diversity within day-to-day activities.

The scope of the occupational health services also recognised the need to reach out to diverse groups including those that may seek to avoid accessing support, for example some people with mental health disorders. The contract also recognised the need to make health messages and the range of interventions flexible to encourage access from different groups.

## **Case study 2 - Scottish Prison Service, Court Custody & Prisoner Escort Services in Scotland**

The Scottish Prison Service (SPS) are lead authority on behalf of Criminal Justice partner organisations (Scottish Court Service and the Scottish Police Forces) for the provision of Court Custody & Prisoner Escort Services in Scotland. An inherent part of the services is to ensure prevention of escape,

protection of the public and the security, safety and welfare of persons in custody.

The services entail the movement and management of persons to and from places of custody along with various ad-hoc escorts, for example, to attend funerals etc.

A key element of the specification and tender evaluation was to ensure that the selected service provider and their operating processes for the performance of the contract fully embodied practices which support the general equality duty to deal sensitively with all persons in custody having due regard to protected characteristics.

Bidders for the Court Custody and Prisoner Escort Services were required to demonstrate that;

- equality & diversity considerations would be embedded within the services
- HR/staff policies support this, and
- there were appropriate procedures to support the management of staff or any sub-contractors who may fail to exhibit appropriate behaviours.

Bidders provided exemplar policies such as operational and risk assessment procedures (recognising the diverse range of persons in custody managed by the services), staff training and behaviours guidance, searching of persons, vehicle and cell allocation protocols, to demonstrate that the organisation had the appropriate business processes, procedures and culture to enable it to effectively deliver the required services with due regard to equality and diversity, dignity and human rights of the persons in custody.

The service provider's reporting and the SPS's ongoing contract monitoring activities seek to identify any contractual compliance issues (including those relating to equality & diversity) whether through prisoner complaint or any identified breach of duty against the contract requirements.

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<sup>i</sup> The Public Contracts (Scotland) Regulations 2012 <http://www.legislation.gov.uk/ssi/2012/88/made>

<sup>ii</sup> The threshold at which these apply may be lowered through the introduction of the Scottish Government's forthcoming Procurement Reform Bill, for updated information go to: <http://www.scotland.gov.uk/Topics/Government/Procurement>

<sup>iii</sup> EU Procurement Directives 2004/17/EC and 2004/18/EC set out detailed procedural rules which are based on the principles outlined in the Treaty on the Functioning of the European Union: <http://www.scotland.gov.uk/Topics/Government/Procurement/policy/Legislation/ECDirandScotreg>

<sup>iv</sup> The Scottish Parliament is not subject to the Scottish Specific Duties. However, their approach has been included here as an example of good practice.