Equality through procurement in further and higher education
Acknowledgments

Thanks to Alex McFarlane of the British Universities Finance Directors Group Procurement Professionals Group (BUFDG PPG formerly the Association of University Procurement Officers, AUPO) and Nottingham Trent University for his support in writing this guidance.

ECU would also like to thank the following people for their valuable advice and assistance:

- Simon Button, School of African and Oriental Studies
- Wendy Kenyon, Manchester Metropolitan University
- Maria McGilloway, University of Ulster
- Tony O’Shea-Poon, Open University
- Rosie Qureshi, University of Salford
- Sheila Ross, University of the West of Scotland
- Deborah Viney, School of African and Oriental Studies

Thanks also go to the following colleges for their permission to include their practice as examples:

- Langside College
- John Wheatley College
- South Lanarkshire College

Further information

Freya Douglas
info@ecu.ac.uk
Equality through procurement

In further and higher education

Contents

1 Introduction 1
Guidance overview 1
Procurement in UK higher education and colleges in Scotland 1

2 Why embed equality in procurement? 3
Procurement and equality legislation 3
Business case 6

3 Embedding equality in policy, strategy and practice 7
Equality within sustainability strategies 11

4 Equality in the procurement process 13

5 Planning the contract 16
Identifying the equality relevance of contracts 16
Contract specification (high-relevance contracts) 26
Contract conditions 32

6 Tender process 35
Advertising opportunities 35
Guidance for contractors 35
Vendor questionnaire 36
Scoring questionnaires 41
Invitation to tender 42
Evaluating tenders 43

7 Managing and monitoring contracts 44
All contracts 44
High-relevance contracts 44
Supporting contractors to deliver on equality 45
Reviewing contracts 46
Supplier lists 47
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Supporting departmental or devolved purchasing</td>
<td>48</td>
</tr>
<tr>
<td>9</td>
<td>Toolkit</td>
<td>49</td>
</tr>
<tr>
<td></td>
<td>Relevance assessment tool (adapted from Open University tool)</td>
<td>49</td>
</tr>
<tr>
<td></td>
<td>Equality contract conditions model for England, Scotland and Wales</td>
<td>52</td>
</tr>
<tr>
<td></td>
<td>Equality contract conditions model for Northern Ireland</td>
<td>54</td>
</tr>
<tr>
<td></td>
<td>Model vendor questionnaire for England, Scotland and Wales developed with BUFDG PPG</td>
<td>56</td>
</tr>
<tr>
<td></td>
<td>Model vendor questionnaire for Northern Ireland</td>
<td>62</td>
</tr>
<tr>
<td>10</td>
<td>Further resources</td>
<td>63</td>
</tr>
</tbody>
</table>
1 Introduction

Guidance overview

This guidance is designed to support UK higher education institutions (HEIs) and Scottish colleges to embed equality in their procurement practices to fulfil their obligations under equality legislation, including the Equality Act 2010.

Developed with assistance from the British Universities Finance Directors Group Procurement Professionals Group (BUFDG PPG formerly the Association of University Procurement Officers, AUPO), and procurement and equality and diversity practitioners from a range of institutions, this guidance will assist institutions to embed equality in procurement arrangements from policy down to practice by aligning procurement and equality strategies and integrating equality into the key stages of the procurement process.

Sections of this guidance that make reference to procurement regulations, and the contract conditions and vendor questionnaire models contained in the toolkit, have been reviewed for legal compliance. However, HEIs should seek their own independent legal advice as necessary when developing their procurement process.

Procurement in UK higher education and colleges in Scotland

Procurement is the complete process of acquiring goods and services from third parties. The UK higher education sector and college sector in Scotland procure a wide range of goods and services worth in excess of £4 billion annually, from office furniture and IT systems to the services of architects, marketing consultants and website designers. With activity on such a scale, there is opportunity for HEIs and colleges to make a significant contribution to advancing equality through procurement.

See JISC Procureweb for further information: help.procureweb.ac.uk/goodpracticeguide/euproclaw/index.html
1 Introduction

In HEIs, procurement departments or equivalent are responsible for the majority of large-scale purchasing. In Scottish colleges, there is often no specialist with responsibility for procurement. However, procurement activities are undertaken in a variety of ways within academic and support functions, with senior management responsible for strategy and process.

Not all procurement is undertaken in-house; HEIs and colleges often work collaboratively with regional purchasing consortia in setting up large-scale contracts for goods and services. Although this procurement activity is undertaken outside the institution, it is nevertheless driven by the institution's procurement strategy and institutional objectives, where consideration of equality should feature.
2 Why embed equality in procurement?

Procurement and equality legislation

The higher and further education sectors have made significant progress in developing processes that enable a robust approach to considering equality in procurement. However, the extent to which equality considerations are integrated into the various stages of the procurement process varies between institutions and some do not go beyond checking contractors’ compliance with anti-discrimination legislation. While this is important, institutions have the potential to go further to promote equality when procuring goods and services where equality is relevant to the subject matter of the contract.

The introduction of the Equality Act 2010 provides an impetus for institutions to reconsider their procurement function to develop more advanced mechanisms for embedding equality.

Equality Act 2010

In England, Scotland and Wales, the Equality Act 2010 requires public authorities, including HEIs, colleges and their contractors, to ensure that they do not unlawfully discriminate in their employment practices or provision of goods, facilities or services in terms of the following protected characteristics:

= age
= disability
= gender reassignment
= marriage and civil partnership
= pregnancy and maternity
= race
= religion or belief
= sex
= sexual orientation

The Act’s public sector equality duty (PSED) also applies to HEIs and colleges in England, Scotland and Wales.
2 Why embed equality in procurement?

The PSED requires due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010, ensuring there is no unlawful conduct as outlined in the Act in regards to employment and provision of services
- advance equality of opportunity between people from different groups considering the need to:
  - remove or minimise disadvantages suffered by people due to their protected characteristics
  - meet the needs of people with protected characteristics
  - encourage people with protected characteristics to participate where their participation is low
- foster good relations between people from different groups, tackling prejudice and promoting understanding between people from different groups

The Act specifies that compliance with the PSED may involve treating some people more favourably than others.

The institution remains responsible for meeting the PSED in the provision of goods and services to staff and students when delivered by a contractor.

Further information on the Equality Act and PSED is available on Equality Challenge Unit (ECU)’s website:

- [www.ecu.ac.uk/law/equality-act](http://www.ecu.ac.uk/law/equality-act)
- [www.ecu.ac.uk/publications/equality-act-2010-revised](http://www.ecu.ac.uk/publications/equality-act-2010-revised)

**Scotland and Wales**

The Scottish and Welsh regulations underpinning the PSED contain two specific requirements concerning procurement.

- Where a public authority proposes to enter into an agreement on the basis of a most economically advantageous offer, it is required to have due regard to whether the award criteria should include considerations to enable it to better perform the PSED.
Where a public authority proposes to stipulate conditions relating to the performance of a relevant agreement, it is required to have due regard to whether the conditions should include considerations to enable it to better perform the PSED.

A public authority would better perform the PSED through meeting one or more of the needs of the PSED to a greater extent than it would otherwise.

In Scotland, regulations specify that this action should be taken when equality is related to and proportionate to the subject matter of the proposed contract.

www.ecu.ac.uk/publications/the-public-sector-equality-duty-specific-duties-for-scotland

Section 75 of the Northern Ireland Act 1998 requires public authorities, including HEIs, to have due regard to the need to promote equality of opportunity between:

- people of different religious belief, political opinion, racial group, age, marital status or sexual orientation
- men and women generally
- people with a disability and people without
- people with dependants and people without

Public authorities are also required to have regard to promoting good relations between people of different religious belief, political opinion and racial group.

www.ecu.ac.uk/publications/anti-discrimination-law-in-northern-ireland
Why embed equality in procurement?

Business case

Procurement decisions should always be based on obtaining best overall value for money, which means the most economically advantageous, taking into account factors such as price, quality, delivery, service and sustainability. The context of the economic downturn means that the financial aspects in procurement decisions across the public sector have become more important. Aside from supporting an institution’s work to meet the requirements of equality legislation, taking equality into account can assist in ensuring goods and services procured are fit for purpose for all staff and students and can reduce costs in the longer term.

Through embedding equality in procurement institutions can:

- meet the increasingly diverse needs of their students and staff, improving their experience, increasing retention rates and enhancing domestic and international reputation
- avoid unexpected costs of, for example, replacing goods found to be unsuitable for some students
- safeguard institutional reputation through only entering into contracts with organisations that comply with equality legislation
- decrease the risk of complaints and legal challenges from individuals and groups
- advance corporate social responsibility and support small and medium enterprises and local businesses
3 Embedding equality in policy, strategy and practice

To ensure the institution meets equality legislation and gives due regard to the PSED in its procurement function, equality should be embedded from policy level down to practice. The institution’s approach to equality should inform and be visible within its procurement policy and strategies, and translate into procurement procedures and practices.

Those responsible for procurement policy and strategy should ensure that:

- procurement policies (setting out the institution’s strategic approach to procurement within regulatory and legislative frameworks) reference equality legislation and express the institution’s commitment and approach to equality

- procurement strategies (setting out the direction for procurement and related activities for a specified period) include the direction for equality; a specific equality in procurement strategy can be developed, or the approach to equality clearly set out in the main strategy

- procurement procedures and processes (developed for staff involved in procurement to translate policy and strategy into action) set out the specific ways in which equality should feature in the procurement process

It is also important that procurement is considered when developing or reviewing the institution’s equality and diversity strategy and that the two strategies are aligned or linked. Partnership working across procurement and equality and diversity functions will promote a joined-up approach in strategy development and implementation.

Policy, strategy and procedural documents should be made widely available to ensure staff undertaking procurement activity and potential contractors are aware of the importance of equality in the institution’s procurement process. Equality awareness training for staff involved in procurement will support implementation.
The University of Salford sets out its commitment in a procurement equality statement:

‘The university strives to ensure services are equally accessible to everyone and appropriate to the differing needs of all sections of the community it serves. Equality in service delivery makes sure the services the university provides meet the diverse needs of different groups. It does this by: ensuring the service is accessible, adequate and appropriate to the needs of all users. The university aims to achieve a consistent approach to equality in the delivery of all its services to both staff and students. The university also expects people working on its behalf to practise equal opportunities. They must be clear about the university’s position on equality and be aware of the requirements placed upon them to adhere to its policies.

The university takes a proactive approach to its obligations arising from equal opportunities legislation. All organisations wishing to provide services on its behalf must be able to demonstrate that all reasonably practicable steps are taken to allow equal access and equal treatment in employment and service delivery for all. If they fail to do this they could make the university, and in some cases individuals, liable to legal action.’

www.purchasing.salford.ac.uk/tenders

The School of Oriental and African Studies includes the following statement on procurement in its equality and diversity statement:

‘The school will ensure that its procurement policies and practices comply with legislation and support its equal opportunities policies by:

= insisting that appointed contractors share and help to deliver our equal opportunities goals
= making sure our selection and tendering processes positively address and include equality considerations
= monitoring contracts for compliance
= including appropriate terms and conditions
= training staff in equality issues for procurement’
South Lanarkshire College outlines the equality obligations for service providers and contractors in an equality policy available on its website:

‘All service providers and contractors appointed by and/or working on behalf of the college will be responsible for following the college equality policy on race, religion, gender, age, disability and sexual orientation.’

The college also specifies equality obligations for specific contractors:

- ‘the dietary requirements of ethnic minorities will be catered for by the catering service provider
- disability access requirements and the needs of different ethnic, racial and religious groups will be taken into consideration by those engaged in planning, constructing or modifying estates, facilities and services’

In addition, the college sets out its own obligations during the procurement process to include the appropriate conditions in any contracts or agreements with external service providers and take all reasonable steps to confirm acceptance of these conditions.

Manchester Metropolitan University’s single equality scheme includes building equality into procurement as an objective. A number of commitments have been agreed between the procurement department, purchasing staff and equality and diversity manager, including to:

- develop equality pre-qualification questions to include in all tenders for works or services over £30,000
- develop guidance for key staff managing purchasing processes under £30,000
- include a procurement guidance factsheet in equality and diversity online training
- add equality and diversity guidance and links to equality policy to its value-for-money online course
Embedding equality in policy, strategy and practice

- Hold regular equality reviews with key purchasing and contracts staff to establish any key equality considerations for contract and performance reviews
- Include equality clauses in contracts

Procurement equality policy:
- Develop an equality policy in procurement for guidance through the procurement process (using sustainable procurement policy as a guide), implement this policy with procurement staff and monitor its effectiveness

Contract performance management for contracts relevant to equality:
- Include clauses in contract specifications to ensure equality is an important consideration
- Discuss equality considerations as part of initial contract commencement with contractors

The University of Ulster works to consider equality at all stages of the procurement process. Equality and diversity services worked with the procurement office to consider ways of embedding equality of opportunity and section 75 obligations within procurement, and agreed:
- General terms and conditions of purchase, including a commitment to promote equality of opportunity and good relations and links to the university’s equal opportunities policy
- A pre-qualification questionnaire including equality questions to check compliance with legislation and to assess the vendor’s track record in relation to equality and diversity
- Information on equality and diversity for staff and suppliers on the procurement office webpages
- Equality training for procurement managers and staff in physical resources responsible for procurement
The university’s invitation-to-tender document includes a standard equality of opportunity contract condition based on a model contract from the central procurement directorate which requires contractors to:

- comply with legislative requirements in relation to equality, discrimination and section 75 duties
- take reasonable steps to ensure all their separate agents, employees, consultants and sub-contractors comply

The Open University’s equality and diversity team and finance and estates departments collaboratively produced ‘Equality and contracting goods and services: guidance for people with responsibility for creating and approving contracts using tendering procedures’, which explains the university’s obligations under the PSED and how equality should feature in the key stages of the university’s procurement practices. The internal document includes a template tool for use when developing contracts and the university intends to create case studies illustrating how equality should be considered in different types of contract.

**Equality within sustainability strategies**

Sustainable procurement enables institutions to meet their needs for goods and services, achieving value for money on a whole life basis and generating benefits for the institution, society and the economy, while minimising damage to the environment. It involves looking at:

- environmental concerns such as energy emissions and the materials used in manufacture
- social criteria, for example, ethical issues around working conditions for staff
- economic factors including saving costs across the life cycle of a product and taking account of the real cost of manufacture, supply, usage and disposal

Equality is often considered as part of an institution’s sustainability or corporate social responsibility (CSR) obligations. While not specific to equality, there is scope to embed equality within sustainability or CSR strategies and to consider equality alongside these issues during the procurement process.
Langside College includes an objective in its procurement strategy to embed sound ethical, social and environmental policies within procurement and to comply with relevant UK legislation in all aspects of its purchasing. In relation to equality, it commits to:

- consider the social impact of goods and services in the tender process
- communicate and promote sustainability, including equality, to all employees and ensure that it is included in the tender process

John Wheatley College’s procurement strategy outlines the college’s commitments to CSR objectives and policies, including to:

- ensure that key suppliers have robust CSR policies
- continue to utilise local suppliers and small and medium enterprises
4 Equality in the procurement process

HEI and college procurement activity above certain thresholds takes place according to a prescribed process and follows an agreed cycle. In order to manage procurement in ways that will promote equality, it is important to embed equality considerations at every stage of this process:

- when planning the contract
- during the tender process
- throughout the life of the contract, with particular attention being given at decision-making moments

The level at which equality should feature at the different stages of the process will vary according to the subject matter of the contract and its relevance to the institution’s obligations under the PSED.

For all contracts, institutions will need to ensure that contractors will comply with the requirements of the Equality Act 2010 in their employment practices and service delivery in relation to the contract to be entered into. Institutions will need to ensure that for all contracts contractors do not act in a way that hinders, and do act in way that supports, the institution’s compliance with the Equality Act 2010.

For contracts where equality is of high relevance to the contract, institutions will need to go further to build contracts that ensure contractors will meet specific equality requirements in respect of the contract.

By embedding equality into the procurement process, institutions can ensure they correctly identify the level of relevance of equality to individual contracts, and develop and manage them accordingly.

The table below summarises the equality actions required for all contracts and the additional actions necessary for contracts for which equality is highly relevant at each stage of the procurement process. The corresponding pages of the guidance are indicated.

The following sections will assist institutions to determine whether a contract is of high relevance to equality.
### Summary of equality actions according to contract relevance

<table>
<thead>
<tr>
<th>Procurement stage</th>
<th>Actions for all contracts</th>
<th>Additional actions for high-relevance contracts</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Planning the contract (pp 16–25)</strong></td>
<td>Assessing equality relevance (pp 16–23)</td>
<td>Assess relevance of equality to contract</td>
</tr>
<tr>
<td></td>
<td>Drafting specification (pp 26–30)</td>
<td>Identify necessary specific equality requirements of the contract and include these in the specification</td>
</tr>
<tr>
<td></td>
<td>Drafting contract conditions (pp 31–33)</td>
<td>Include standard equality conditions to ensure contractors comply with Equality Act 2010</td>
</tr>
<tr>
<td><strong>Tender process (pp 34–42)</strong></td>
<td>Undertaking a vendor questionnaire (pp 35–40)</td>
<td>Include full specification with equality requirements and state the equality-related award criteria</td>
</tr>
<tr>
<td></td>
<td>Inviting tenders (p 41)</td>
<td>Include contract conditions for equality requirements</td>
</tr>
<tr>
<td></td>
<td>Ask standard equality questions to check:</td>
<td>Ask additional questions around:</td>
</tr>
<tr>
<td></td>
<td>= compliance with the Equality Act 2010 or equivalent</td>
<td>= the implementation of equality policy</td>
</tr>
<tr>
<td></td>
<td>= observance of the Equality and Human Rights Commission code of practice or equivalent</td>
<td>= staff equality training</td>
</tr>
<tr>
<td></td>
<td>= past performance on equality</td>
<td>= further evidence of commitment to equality</td>
</tr>
<tr>
<td></td>
<td>= equality policy</td>
<td>= can tailor their provision to meet different needs</td>
</tr>
</tbody>
</table>
### Equality in the procurement process

<table>
<thead>
<tr>
<th>Procurement stage</th>
<th>Actions for all contracts</th>
<th>Additional actions for high-relevance contracts</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tender process (continued)</strong></td>
<td>Evaluate tenders (p 42)</td>
<td></td>
</tr>
<tr>
<td>Check that the contractor accepts the standard equality contract conditions</td>
<td>Evaluate the contractor’s ability to meet equality requirements of the specification with appropriate weighting to the relevance of equality to the contract as a whole</td>
<td></td>
</tr>
<tr>
<td>Award the contract on the basis of the contractor’s ability to meet all requirements and provide best value for money</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Managing and monitoring the contract</strong> (pp 43–46)</td>
<td>Monitor the contractor’s performance on standard equality contract conditions</td>
<td>Monitor the contractor’s performance on the equality requirements of the contract</td>
</tr>
<tr>
<td>Take appropriate action where performance is inadequate</td>
<td>Take appropriate action where performance is inadequate</td>
<td></td>
</tr>
<tr>
<td>Review performance at the end of the contract</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
5 Planning the contract

Identifying the equality relevance of contracts

Equality will be a highly relevant consideration for a contract when the provision of goods or services in question is likely to directly or indirectly affect the institution’s ability to comply with the Equality Act 2010 generally, including meeting the requirements of the PSED.

In practice, a large proportion of an institution’s contracts will be highly relevant to equality in some respect or another. However, to ensure these contracts are identified and the appropriate level of action is taken in the next stages of the procurement process, it is necessary to assess the relevance of equality to each contract, or group of similar contracts, on a case-by-case basis.

The approach set out below has been developed to aid procurement practitioners in undertaking assessments of the relevance of equality to a contract. However, institutions will need to develop an approach that fits their own institutional context.

Approaching relevance assessment

When undertaking an assessment, it can be helpful to consider the relevance of the contract to the three requirements of the PSED, and the institution’s wider work to meet the duty. Consideration of the way the contract is to be delivered and the responsibilities of the contractor in terms of deciding what is to be provided will be important, as well as the diversity of the end users, their protected characteristics, their needs and the impact the contract could have on advancing equality for and between different users.

The following types of contracts are likely to be highly relevant to the institution’s obligations under the PSED, but this is not an exhaustive list:

- contracts relevant to eliminating unlawful discrimination and prohibited conduct
- contracts relevant to advancing equality of opportunity
- contracts relevant to fostering good relations
- contracts relevant to supporting the institution’s wider work to meet the PSED
Contracts relevant to eliminating unlawful discrimination and prohibited conduct

Contracts where the contractor or contractor’s staff’s conduct, employment and service delivery practices are important to ensuring no unlawful discrimination or prohibited conduct occurs, such as:

- contracts involving frequent contact between the contractor’s staff and the institution’s staff, students or members of the public, including student- and staff-facing services, maintenance or service agreements and work conducted on site or involving on-site delivery

- contracts where the contractor’s conduct towards, and employment practices for, their own staff are important

- contracts where the contractor’s consideration of reasonable adjustments for different staff or students is important during their service delivery, such as building or refurbishment work where the contractor may need to make adjustments to ensure access for disabled students while work is carried out

- any other contracts where there is significant potential for unintended unlawful discrimination or other prohibited conduct by the contractor to occur

Contracts relevant to advancing equality of opportunity

Contracts where equality of opportunity by minimising disadvantages, meeting different needs and encouraging participation by underrepresented groups of staff, students and contractor’s staff is important, such as:

- contracts that could put some at a disadvantage in comparison with others, where known disadvantage exists and there is scope to address this through the contract

- contracts that must meet the needs of staff and students with a variety of different protected characteristics, for example, a catering contract that requires the contractor to provide for a range of dietary requirements, including those for people with specific religious beliefs
5 Planning the contract

contracts for goods or services related to areas where participation by some groups is low and there is opportunity to encourage participation: for example, a contract for recruitment services of temporary staff where black and minority ethnic people are often underrepresented

contracts where ensuring equality of opportunity for the contractor's workforce is important

contracts where there is scope to do more to improve equality for staff, students or contracted staff through the contract, for example to increase the participation of disabled people

Contracts relevant to fostering good relations

Contracts relating to areas where there are known or potential tensions or misunderstandings between groups, or where there is opportunity to tackle prejudice or promote understanding. For example, a contract involving room or facility allocation or timetabling where it is important that everyone has equal access to rooms, or for a student service to be used by a diverse mix of students that could foster good relations between different students. In practice, there may be few contracts that are relevant solely to this part of the duty.

Contracts relevant to supporting the institution’s wider work to meet the PSED

Contracts which relate to or could support the institution’s equality strategy or equality objectives, including any specified targets or equality initiatives. Some contracts will also be relevant to the institution’s specific duties under the PSED, such as collecting equality information on staff and students.

Making a judgment

If the contract does not fall under any of the categories above, it is probably of low relevance to equality, and the equality actions for all contracts presented in the summary table on pages 14–15 should be sufficient.

If it falls into one or more of the categories, the contract is likely to be of high relevance to equality. As such, the actions for highly
relevant contracts as well as those for all contracts should be completed during the procurement process.

There will of course be levels of relevance within the high-relevance category; some contracts will be relevant in several ways, and some in fewer. The additional actions should be undertaken for all these contracts, but tailored to suit the contract’s areas of relevance to equality.

**Assessment questions**

To assess whether a contract is relevant to one or more of the parts of the PSED as outlined above, asking some key questions about the contract can be helpful, such as:

- will there be face-to-face contact between contracted staff and institution staff or students during the delivery of the contract?

- does the contract need to cater for a diverse range of staff or students with different protected characteristics and different needs?

- will the contractor have any responsibility for deciding the outcomes of available opportunities or selecting people as part of the contract?

- are there known inequalities in relation to what is to be provided by the contract? For example:
  - disadvantages between certain staff or students
  - low participation by certain staff or students

- are there any known or potential tensions, conflicts or misunderstandings between different groups related to the subject of the contract?

- does the institution have any equality objectives or outcomes that relate to the contract and will it be relevant to any of the institution’s specific duties under the PSED, such as data collection?
Nottingham Trent University asks the following questions to assess relevance.

- Who would be the recipients of the goods or services?
- Would there be direct contact between the supplier and university staff, students or external people, excluding delivery of goods by a supplier where the only action is delivery of goods and a signature?
- Would the supplier be working on university sites continually over a period of time?
- Would the required goods or services need to specify requirements for people from diverse ethnic and cultural backgrounds, for example, provision of uniforms, recipients of course materials, provision of catering?

If the answer to these questions is yes then the university classifies the contract purchase as ‘highly relevant’.

Using information and involvement

Information on the end users or those who will be affected by the contract will need to be considered to fully assess the equality relevance of a contract. This may include monitoring data on users according to their protected characteristics, or information on the likely needs of different groups.

Where insufficient information is available, it may be helpful to obtain additional information through involvement and consultation with users with different protected characteristics. This may include:

- staff and students
- external service users such as visitors
- representatives of protected characteristics or equality groups
- trade unions for employment-related contracts
Continuing relevance assessment

Having collected all relevant information, it is good practice to revisit the relevance assessment of the contract to determine whether the original rating is still valid. If information has revealed more areas of relevance than anticipated it may be necessary to treat the contract as a higher relevance contract. Similarly, if it shows fewer equality considerations it may be appropriate to treat the contract as a lower relevance contract.

Assessment tools

The BUFDG PPG commodity risk-assessment matrix

This matrix provides a basic guide to the relevance of equality to commodities used in the higher education sector based on the PROC-HE commodity codes. Each commodity code has been assessed for equality, environment, waste and electrical and electronic equipment disposal and social impacts, and ranked as high, medium and low. The tool was revised in 2008 and does not currently provide the rationale for the ranking for each commodity so institutions are advised to review relevance rankings when factoring equality into their approach to tendering to ensure that they reflect the requirements of the Equality Act.

The commodity risk-assessment matrix is hosted on the Sustainable Procurement Centre of Excellence site online.

spce.ac.uk/knowledge_base_cat/resources/prioritisation-toolkits

To facilitate cross-referencing, the PROC-HE commodity codes are supplied for the examples of high-relevance contracts on pages 24–26 and in the contract specification section on pages 26–31.

www.procureweb.ac.uk/code-mapping-search.aspx

Involvement methods include:

- focus groups
- specific surveys or questions embedded in existing surveys
- interviews
- events
- forums and networks
Planning the contract

Public sector tools
The National Sustainable Public Procurement Programme has developed the sustainable procurement prioritisation tool which can be used to help to determine procurement and commissioning priorities. The tool takes cost and social and environmental impacts into account, and also the scope to address the sustainable impacts and the scope to influence supply. Although not specific to equality, the tool includes diversity, employment and community within its socioeconomic assessment categories, which could be helpful for an equality assessment. The tool calculates a prioritisation score by combining the results of assessments of the:

- level of risk surrounding the procurement
- scope to do more to improve sustainability through the procurement
- potential influence of the contract on the practices of the supplier

These areas of assessment may be helpful when thinking about the equality-related risks surrounding a contract and how to assess the scope to promote equality through a contract.

sd.defra.gov.uk/advice/public/nsppp/prioritisation-tool

Equality impact assessment
Conducting an equality impact assessment or equality analysis of the institution’s procurement policy and procedure (and on any revisions made to the policy and procedure) will help HEIs to identify potential adverse impact on people with protected characteristics. Some HEIs also carry out formal equality impact assessments at the beginning of a procurement process for high-relevance contracts. Questions used in an assessment may include the following.

- Are there any concerns or is there evidence that this procurement could have an impact on people due to their protected characteristics?
- Could this impact amount to an adverse impact?
Can the procurement be altered (in terms of objectives or specification) to eliminate the adverse impact and still meet the overall aims?

ECU guidance on conducting equality impact assessments can assist institutions in using this process as a tool in the procurement process.

ECU (2007) *Conducting equality impact assessments in higher education.*


**Internal tools**

Some institutions have developed specific documentation or tools for procurement practitioners to use to promote a consistent and robust decision-making process.

The Open University has developed a template to support assessment of whether specific equality-related award and contract conditions are required for individual contracts as part of its ‘Equality and contracting goods and services: guidance for people with responsibility for creating and approving contracts using tendering procedures’. The template assists staff to:

- use evidence to make judgments and decisions
- assess how each contract may be used to further the three parts of the PSED to eliminate unlawful discrimination, advance equality of opportunity and foster good relations

A tool based on the Open University template is presented in the toolkit on pages 49–51.
Examples of high-relevance contracts

The following examples of high-relevance contracts are for illustrative purposes. Institutions will need to undertake their own relevance assessments for similar contracts on a contract-by-contract basis.

Construction of institution buildings or facilities: PROC-HE commodity code WU/WB

This contract would be of high relevance because:

- there will be some face-to-face contact between contracted staff and the institution’s staff and students during the delivery of the contract, so the conduct of contracted staff is important
- the contractor will need to cater for staff and students with different protected characteristics and different needs in the design and construction of the new building or facilities
- there are known inequalities in relation to buildings and facilities for student and staff use, in terms of:
  - disadvantages in accessing or using buildings and facilities by people within certain protected groups
  - lower participation in some activities and facilities by people within certain protected groups
- there may be known or potential tensions, conflicts or misunderstandings between different protected groups related to building or facility design that could be averted, for example, the positioning of changing rooms in sports facilities or inclusion of religious spaces in social areas

Provision of taxi services: PROC-HE commodity code TD

This contract would be of high relevance because:

- there will be face-to-face contact between taxi drivers and a wide range of institution staff and students as part of the contract so the behaviour of contracted staff will be important
- the contract needs to cater for a diverse range of staff or students with different protected characteristics and different needs, including:
  - people with a physical impairment or mobility issues
  - deaf or hearing impaired people
– blind or visually impaired people
– potentially women of religions/beliefs who prefer a female driver

= there are known inequalities for certain protected groups which can be reduced by transport services, in terms of:
  – reducing disadvantage between certain staff or students, such as those who are disabled or elderly
  – encouraging and facilitating participation in the institution’s services by certain staff or students

**Recruitment of temporary and permanent staff:**
**PROC-HE commodity code RK**

This contract would be of high relevance because:

= there will be significant face-to-face contact between contracted temporary and permanent staff and institution staff or students so the conduct of contracted staff will be important

= the contractor will have some responsibility for selecting staff as part of the contract so their compliance with equality legislation in their employment practice will be important

= there may be known inequalities in relation to opportunities for employment, in terms of:
  – disadvantages between people within certain protected groups in accessing employment opportunities at the institution
  – lower levels of employment at the institution by people within certain protected groups, for example black and minority ethnic people

= the contract would be relevant to the institution’s work to meet the PSED in regards to collecting, monitoring and publishing equality information on its employees
Planning the contract

Learning and development services for institution staff: PROC-HE commodity code RP

This contract would be of high relevance because:

= there will be significant face-to-face contact between contracted learning and development staff and institution staff during the delivery of the contract so their behaviour will be important

= the contract would need to cater for a diverse range of staff with different protected characteristics and different needs, such as disabled staff

= there may be known inequalities in relation to opportunities for professional development, in terms of:
  – disadvantages in progressing to higher levels in the institution between people within certain protected groups
  – low participation in professional development by people within certain protected groups

= the contract may be relevant to the institution’s work to meet the PSED, such as data collection on staff progression

Contract specification (high-relevance contracts)

For contracts identified as high relevance, the contract specification should be used to set out what the contractor will be required to do in regards to equality and how this will be assessed in the selection process.

It will be necessary to determine what requirements can be put in place to ensure the contractor delivers on the areas highlighted during relevance assessment.

= For contracts where eliminating unlawful discrimination and prohibited conduct has been identified as relevant, it will be necessary to consider what requirements will help ensure this conduct does not occur in the delivery of the contract. This may include ensuring the contractor’s employment and service delivery practices comply with equality legislation, the contractor and contracted staff are aware of equality and diversity legislation and institutional policies and appropriate training is delivered.
= For contracts where advancing equality of opportunity for staff or students in terms of meeting specific needs, ensuring against disadvantages for certain users or encouraging participation is relevant, collection and analysis of relevant information on the users will be required to identify the needs or inequalities to be addressed. This may either be undertaken by the institution and included in the contract specification, or be required of the contractor when determining their service or provision.

= For contracts where fostering good relations has been identified as relevant, how this should be taken into account in the delivery of the contract should be specified.

= For contracts where the institution’s equality strategy or objectives have been deemed relevant, measures of performance that will be necessary to assess performance/progress on these objectives should be considered when drafting performance-monitoring requirements.

Contract specifications for tenders subject to the Public Contracts Regulations 2006, the Public Contracts (Scotland) Regulations 2012 or equivalent (EU tenders) specifically should ensure that any requirements stated enable transparency, and ensure that suppliers are treated equally and in a non-discriminatory way, based on the principles of the Treaty of Rome.
### Determining equality requirements

The following table identifies a number of equality requirements that could be considered for inclusion in contract specifications where appropriate and proportionate to the subject matter and relevance of the contract. These are broad suggestions and would need to be tailored to different contracts.

<table>
<thead>
<tr>
<th>Equality relevance identified</th>
<th>Example equality requirements for consideration</th>
</tr>
</thead>
</table>
| Eliminating unlawful discrimination | = Require compliance with equality legislation  
= Require contractor’s employees to be aware of and understand the institution's equality policy  
= Require contractor’s employees to be trained on equality and diversity and/or to attend institutional training |
| Advancing equality | = Require details of how the needs of all users will be met  
= Include details of demographics and/or specific needs to be met  
= Require consultation with users to determine needs and review provision  
= Require monitoring of users and contracted staff (where proportionate to the contract)  
= Require positive action for underrepresented groups |
| Fostering good relations | = Require appropriate action  
= Require appropriate monitoring |
| Institution’s equality work | = Include details of objectives to be met or ask for details of how the contractor will meet these  
= Require appropriate monitoring and reporting (where proportionate to the contract) |

### Using information and involvement to define requirements

Information on the users and any potential equality issues surrounding a contract can be used to help determine requirements for the specification.

Useful information could include:

= monitoring data on users according to age, disability, race, sex or other protected characteristics

= internal survey and consultation responses

= sector surveys such as the national student survey, international student barometer
= complaints and grievances
= census data
= research and information from religious organisations, disability, lesbian, gay and bisexual and other representative organisations
= labour force surveys
= research undertaken by trade unions

It may be helpful to obtain additional information through involvement and consultation with users with different protected characteristics. The involvement methods suggested on page 21 can also be helpful at the specification stage.

**Identifying needs through involvement: PROC-HE commodity code WU/WB**

The University of Ulster’s commitment to equality in procurement is being embraced and applied on the £250 million capital programme for the construction of a brand new campus in Belfast’s cathedral quarter, known as the greater Belfast development. At the tendering stage, bidders for the design team contract were asked for their approach to design development, including accessibility requirements, for all users.

Equality screening was carried out at an early stage of the design development. This involved consultation with a sample of staff who will be moving to the new campus. The consultation identified issues for disabled staff and these were fed back to the appointed design team. Throughout the design development process, information relating to equality and accessibility has been gathered at meetings with staff from the various faculties and departments. User requirements have been captured which have influenced the spatial strategy and the ongoing design for the new campus.
Ongoing involvement

Involvement and consultation can be important beyond the specification stage for some contracts. In some cases, it will be necessary for involvement with users with protected characteristics to be built into arrangements for the development or delivery of the goods or services in question. Depending on the contract, involvement may be best undertaken by the institution or by contractor. It will be important to include any ongoing involvement requirements in the specification.

Nottingham Trent University equality-related specification requirements

**Provision of taxi services: PROC-HE commodity code TD**

To ensure the contractor could provide a service that caters for wheelchair users and other passengers with disabilities, the following requirements were included in the specification:

- vehicles should be accessible to all types and models of wheelchairs
- taxis should be able to carry assistance dogs
- all cars should be fitted with an induction loop and intercom for passengers using hearing aids
- drivers should be able to provide help and assistance to specified groups of passengers

To ensure the contractor can meet the needs of and adapt their service for a diverse range of students and staff with protected characteristics, the service should be able to:

- collect international students arriving in the UK
- assign a female driver to journeys on request

To ensure equality in service delivery and minimise the risk of unlawful conduct, drivers are required to have customer service experience and to offer the same assistance and level of service to all passengers, including those with disabilities.
Recruitment of temporary and permanent staff: PROC-HE commodity code RK
To ensure contractor and contracted staff would comply with equality legislation and the university’s approach to promoting equality, the specification required that:

- the contractor provides services in compliance with the Equality Act 2010
- temporary staff are made aware of the university’s equality and diversity and dignity at work policies
- the contractor promotes equality and dignity within the services they would provide (requiring evidence)

To enable the university to collect equality information on contracted staff to assist its work to meet the PSED, the specification required the contractor to:

- provide management information on a specified basis, including workforce diversity
- monitor equality groups and provide evidence

Learning and development services for university staff: PROC-HE commodity code RP
To ensure the contractor and contractor’s staff would comply with equality legislation and the university’s approach to promoting equality, the specification required that:

- the contractor’s staff be made aware of the university’s equality and dignity at work policies
- the contractor promotes equality and dignity within the services they provide, such as in training materials and creating appropriate learning environments
- the contractor would attend review sessions with the equality and diversity manager where appropriate to ensure that session delivery and content support equality and diversity

To ensure the contractor would advance equality of opportunity in terms of meeting needs, trainers were required to be able to meet the needs of course participants with different protected characteristics including disabilities, such as deafness, visual impairments and wheelchair users.
5  Planning the contract

**Contract conditions**

Equality-related contract conditions should be determined during the contract planning stage along with the specification, taking into account the relevance of equality to the contract.

**All contracts**

For all contracts institutions should include their standard equality contract conditions. Some of the institutions involved in this project have developed general or standard equality contract conditions to ensure that:

- contractors will comply with their obligations under the Equality Act 2010 in their employment practices and service provision in relation to what is to be delivered under the contract, not discriminating unlawfully on the grounds of the protected characteristics

- contractors will comply with the PSED where carrying out a part of the institution’s work on its behalf, specifying the three requirements of the duty and its scope in terms of the protected characteristics

- contractors will not discriminate unlawfully in their treatment of subcontractors and impose all equality contract conditions on subcontractors

- contractors will monitor the protected characteristics of their employees as required

- contractors will abide by the institution’s policies for its own staff and students, such as its equality and dignity at work policies, when working on the institution’s premises or alongside its staff or students

- contractors understand the possible consequences of breaching the equality clauses, especially in high-relevance contracts where a consequence may be the termination of the contract

For EU tenders it would be useful to detail any equality conditions required for compliance by the supplier in the Official Journal of the European Community (OJEU) contract notice, especially for high-relevance contracts. If they are not included in the OJEU notice, then they must be stated in the specification and invitation-to-tender (or equivalent) document.
Some institutions have developed their standard conditions further to include more information on the commitments to equality they require of contractors, the policies or codes of practice they expect them to adhere to and the evidence they require of compliance. Some also include conditions to specify that contractors should promote equality as part of the contract.

**Nottingham Trent University**'s general terms and conditions of contract specify that the contractor must provide any information required about its policies and practices concerning the prevention of unlawful discrimination and the promotion of equal opportunities both in terms of employment and customer service. The contractor must also have regard to the promotion of equality and consider the promotion of equality as a key objective of the contract.

**The University of Ulster**’s equality of opportunity contract condition is based on a model contract from the Central Procurement Directorate (ECNI, 2008). It requires contractors to agree to comply with all applicable fair employment, equality of treatment and anti-discrimination legislation in Northern Ireland. It also asks contractors to take reasonable steps to ensure all their servants, agents, employees, consultants and subcontractors comply.

The condition goes a stage further in requiring contractors to agree to use their best endeavours to ensure that in their employment policies and practices and in the delivery of the services under the contract they have due regard to the need to promote equality of treatment and opportunity between:

- people of different religious beliefs or political opinions; men and women or married and unmarried people
- people with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave)
- people of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997)
5 Planning the contract

A model of suggested equality contract conditions for all contracts is included in the toolkit on pages 52–55, developed from current practice in the sector.

**High-relevance contracts**

In addition to the standard equality conditions, conditions should be included to ensure the contractor delivers on the equality requirements of the specification. These conditions will reflect the requirements, in terms of the contractor’s ability to meet them and measurement of performance.
6 Tender process

Advertising opportunities

All contracts

At advertisement and selection stage, institutions should use advertising platforms that will reach a wide range of potential contractors and not disadvantage smaller businesses to increase opportunities for a diverse range of contractors. Institutions can consider different types of media such as community- or locality-based as well as national platforms, as well as meeting legal obligations such as the OJEU notice if applicable.

High-relevance contracts

Any equality requirements in the contract specification and selection and evaluation criteria should ideally be included in the OJEU notice. If selection or evaluation criteria are not included in the OJEU contract notice then they must be provided either within the pre-qualification document, if using a two-stage process, or the invitation to tender (or equivalent) as applicable. Equality specification requirements must be included in the tender documentation.

Guidance for contractors

Institutions can provide information for prospective contractors on their equality in procurement policies and procedures so that contractors are aware of what is expected of them in the procurement process and are better prepared for entering into a contract with the institution.

The University of Salford has developed a guidance document for prospective and existing contractors and subcontractors which gives advice and information on how the university will promote equality in the procurement of goods, works and services and what the university expects from contractors and suppliers regarding equality and diversity. It includes guidance notes on completing the university’s pre-qualification questionnaire and the university’s standard for equality and diversity in procurement (see pages 39–40).

www.equality.salford.ac.uk/cms/resources/uploads/File/Engagement_Consultation/f131010/Procurement%20guidance%20ECF%201011.doc
Vendor questionnaire

**Single-stage processes**

If the tender process involves a single-stage approach, institutions should ask contractors to provide certain information via a vendor questionnaire as part of the invitation to tender. For open one-stage EU tender processes, institutions cannot use selection criteria but can include minimum requirements that suppliers must meet and apply stated qualification criteria, failure to satisfy the requirements can result in the elimination of a supplier from the tender evaluation process.

It is permissible to include requirements relating to equality in this one-stage process provided that they are linked to the subject matter of the contract. Questions relating to breaches of legislation or tribunal decisions could be relevant in this regard.

**Two-stage processes**

To draw up a shortlist of contractors in two-stage tender processes, institutions should ask contractors to provide certain information via a pre-qualification or vendor questionnaire before inviting bids or tenders from those who meet their requirements.

**First stage**

There are strict limits on the subject matter that can form part of the first pre-qualification phase in an EU tender. Questions should relate only to the economic and financial standing and technical or professional ability of the supplier. In this context, it will only be appropriate to ask questions at the pre-qualification
stage about compliance with equality requirements to the extent that it can be shown that these are relevant to the general capability of the supplier to deliver products or services to a customer in a manner compliant with the Equality Act 2010.

Second stage
There is more flexibility in the questions that can be raised in the second stage of an EU tender process within the invitation to tender (or equivalent). These can focus on the specific manner in which the supplier will achieve equality in relation to the delivery of the goods or services in question.

All contracts
Questionnaires should explain why equality questions are being asked and how answers will be used or scored. Outlining the institution’s obligations under the PSED in regards to procurement can help contractors understand the importance of demonstrating their performance on equality.

Examples of relevant questions for all contracts would include contractors’ compliance with the Equality Act 2010, or equivalent legislation in the countries in which the contractor operates (if an EU tender), and track record on equality and diversity.

High-relevance contracts
Although there are some questions that will need to feature in all questionnaires, such as compliance with equality legislation, some should be included on a case-by-case basis, according to the relevance of equality to the contract.

For high-relevance contracts, where the contractors’ equality in their employment practices and service delivery is integral to their ability to deliver the equality requirements of the contract, there is also scope to ask additional questions to assess the contractors’ capability in promoting equality, complying with the institution’s own equality policies and their ability to meet the requirements of the PSED when delivering services on the institution’s behalf. This will help the institution select contractors with the ability to support the institution’s PSED. Questions must be relevant to the subject matter of the contract for EU tenders.
Institutions could invite contractors to include additional evidence of:

- information on work done in previous or existing contracts
- equality and diversity initiatives undertaken such as mentoring schemes, staff networks, etc
- staff training and development in terms of equality and diversity
- membership of charter marks or recognition programmes
- impact of the policies and practices such as evidence of staff progression by protected characteristic

**Model questionnaire**

A model questionnaire developed with the BUFDG PPG is included in the toolkit on pages 56–61. It provides two levels of questions; questions for all contracts and additional questions for high-relevance contracts. It suggests questions that could be used to obtain evidence of contractors’ capability in promoting equality, in complying with the institution’s own equality policies and their ability to meet the requirements of the PSED when delivering services on the institution’s behalf. These could be considered for inclusion in the institution’s existing questionnaire and have been checked for legal compliance. However, the use of each question will need to be considered carefully to ensure it is relevant and proportionate to the contract in question, and may require tailoring or adapting to fit the subject matter of the contract.

**Proportionality and small and medium enterprises**

So as not to disadvantage small and medium enterprises, some HEIs provide further information on how contractors will be expected to answer certain parts of the questionnaire commensurate to the size of their organisation. Some provide guidance notes for potential contractors to explain how their size will be taken into account during selection, and some also provide space in the questionnaire for contractors to explain reasons for their answers to certain questions, so that smaller firms can explain why for example, they do not yet have a published equality policy or are not in a position to provide training to employees. In addition, some institutions signpost contractors to information on developing an equality and diversity policy, should they be unable to meet this requirement at the time of completing the questionnaire.
The University of Salford has introduced a standard for equality and diversity in procurement based on a model developed and used by West Midlands Local Authorities and Kirklees Council for potential contractors for critical areas including: those where anticipated costs exceed £50,000 per annum, those involving interaction with staff or students, those where the contractor or their employees will be the public face of the university, and all recruitment, marketing and communications contracts. While not used in the overall scoring of tenders, it allows the university to judge where a contractor may need extra support in submitting their tender.

The standard requires contractors to demonstrate their commitment to equality and diversity through meeting levels of criteria and providing supporting evidence relevant to the size of their business.

**Level 1 (fewer than five employees)**

Contractors should provide written assurance that the appropriate level of the standard will be achieved following any recruitment that increases the size of the firm to five or more employees. Although no formal assessment will take place, where an organisation has evidence to support a formal commitment to promoting an equality and diversity approach this will be welcomed.

**Level 2 (five to 49 employees)**

Contractors should:

- provide an equality and diversity policy in respect of the protected characteristics that covers at least:
  - recruitment, selection, training, promotion, discipline and dismissal
  - harassment, bullying, discrimination and victimisation making it clear that these are disciplinary offences within the organisation
  - identification of the senior position with responsibility for the policy and its effective implementation
  - how the policy is communicated to staff
Tender process

- implement the policy effectively within the organisation’s recruitment practices, to include open recruitment methods such as the use of job centres, careers service and press advertisements
- review the policy regularly
- regularly monitor the number of job applicants by, as a minimum, gender, race, age and disability (at least annually)

Level 3 (50 or more employees)

In addition to the criteria of level 2, contractors should:

- provide written instructions to managers and supervisors on equality in recruitment, selection, training, promotion, discipline and dismissal of staff
- provide equality training for managers and any staff responsible for recruitment and selection
- carry out annual monitoring on the number of employees by gender, disability, age, race, sexual orientation and religion and belief (as a minimum race, gender, disability) groups by grade when:
  - in post
  - applying for posts
  - taking up training and development
  - promoted
  - transferred
  - disciplined and dismissed
  - leaving employment
- take steps, including positive action where appropriate, to address any imbalances if monitoring reveals underrepresentation of any groups
- regularly report and consult on equality issues within the workforce (at least annually)
- mention in the organisation’s recruitment advertisement and publicity literature that equality and diversity practices are in place
Scoring questionnaires

Institutions normally score questionnaire responses according to a scoring scheme or methodology that includes any equality questions.

All contracts

As a minimum, it is recommended that institutions should provide for the exclusion of suppliers who do not comply with equality legislation or who have had findings of unlawful discrimination in the past three years and have not taken sufficient remedial action. Tenderers should be made aware of any questions that could lead to exclusion if responses show non-compliance.

High-relevance contracts

The weight given to equality question responses can differ from contract to contract in accordance with the relevance of equality, as long as it is made clear in the procurement documentation what weighting will be given. For example, more weighting should be given to contractors’ responses regarding their equality policies, practices and initiatives, if asked, for their own workforce when their staff will be delivering an institution service to staff and students, to demonstrate that their staff have the ability to deliver the service to a diverse range of people. Simply having an equality policy would not score highly in this case, whereas examples of how this policy is applied in practice would generate higher marks.

Proportionality is the key to deciding on weighting. It is important to consider small and medium enterprises when setting equality requirements and weightings, as larger companies will have more resources to commit to equality initiatives than smaller businesses, and setting unnecessarily stringent minimum equality requirements or too high a weighting could put small and medium enterprises led by ethnic minorities, women or disabled people, or related to one of the other protected characteristics, at a disadvantage.

The University of Ulster uses an evaluation matrix to score contractors’ responses to pre-qualification questionnaires. This scores contractors out of 100, with the equality questions making up 10 points of the total.
Invitation to tender

At this stage, institutions invite bids or tenders from contractors, either from those selected via the pre-qualification questionnaire in a two-stage restricted process or to any bidder in an open single-stage process.

All contracts

The invitation to tender should include:

- equality questionnaire questions for all contracts, if not asked previously
- draft standard equality and diversity contract conditions

High-relevance contracts

The invitation to tender should include:

- equality questionnaire questions for high-relevance contracts, if not asked previously
- the contract specification including equality requirements
- the award criteria that will be used to evaluate tenders, including for the equality requirements, making clear any evidence required to demonstrate ability
- draft contract conditions relating to the equality requirements

Where asking a contractor to comply with equality legislation and institutional policies, it is helpful to signpost contractors to relevant documents and further information and guidance.

The School of Oriental and African Studies includes its equality and diversity statement as an appendix to its invitation-to-tender documents. This includes details of unacceptable conduct under the Equality Act 2010 including different forms of discrimination, harassment and victimisation, lists the nine protected characteristics covered by the Act and signposts to further information.
Evaluating tenders

All contracts

For EU tenders, institutions must agree on the weightings to be given to the evaluation of equality requirements and include these in the invitation to tender in advance of evaluation to ensure fairness, transparency and consistency. It is best practice to do this for all tenders so that suppliers are aware of the evaluation criteria and the importance attached to each one. Institutions can use conditions relating to equality as evaluation criteria and it is possible (provided the documentation makes the position clear) to use these as minimum criteria, so refusal by a contractor to meet certain requirements could mean exclusion from the tender process rather than a lower evaluation score.

High-relevance contracts

Institutions should assess performance on the equality requirements of the specification using the award criteria set during the planning process and communicated to contractors. Weighting arrangements should be proportionate to the relevance of the equality requirements to the contract as a whole: they can be considered against the other requirements in the specification and also prioritised against one another to determine overall scoring.

Institutions will want to look for bids that show an understanding of the equality requirements, as part of a wider value for money evaluation and propose appropriate methods of meeting them throughout the life of the contract. It is important that those responsible for evaluating tenders have received appropriate equality and diversity training to support their decision making.

During the evaluation process, it may be beneficial to involve or consult with end users with protected characteristics where particularly relevant to the contract.

Institutions must always ensure that the evaluation process for an EU tender is conducted fully in accordance with the criteria, methodology and process as published in advance to contractors.
7 Managing and monitoring contracts

Effective contract management is key to ensuring contractors meet the equality requirements of the contract.

**All contracts**

Institutions will want to monitor the contractor’s compliance with the standard equality conditions of the contract. It may be difficult to assess whether contractors are complying with the equality legislation, but reviewing any complaints or grievances and user feedback may alert the institution to any breach of contract in this regard. Prompt action should be taken when performance is inadequate.

**High-relevance contracts**

Monitoring high-relevance contracts will require systems to be put in place to assess whether the contractor is delivering on the equality requirements of the specification and equality-related contract conditions over the life of the contract.

At the contract commencement meeting, the contractor’s responses to the equality questionnaire and tender should be followed up, such as where contractors have indicated they have an equality policy, or how they implement this, this should be checked. If any additional action to improve their equality practices is required, this should be agreed, and support provided where appropriate.

Monitoring arrangements for the equality requirement of the specification should also be agreed. They should build on the contract conditions to clarify responsibilities and how contractors should demonstrate their performance. Monitoring may include reviewing feedback from users, including those with protected characteristics or those with specific needs identified in the contract specification. Where required in the contract, reporting arrangements for the results of monitoring or other information on the service should be agreed.
Supporting contractors to deliver on equality

It is important to ensure contractors understand the equality requirements placed on them at the start of the contract. Training and information needs should also be identified to assist the contractor to deliver on equality requirements.

Many institutions provide tailored equality and diversity training for contracted staff to ensure they understand the relevant equality issues in their area of work and what the institution expects of them in terms of treatment of other staff and students.

**Manchester Metropolitan University** ensures that equality considerations are discussed as part of initial contract commencement of work and projects meetings. The equality practitioner holds one-to-one conversations with contractors to discuss the requirements. For example, a recent contract for works changes to the entrance of a building was discussed with the project manager and contractor and disabled staff requirements were considered.

**The School of Oriental and African Studies** provides equality and diversity training for all externally contracted staff. Recently, in response to feedback from some of their lesbian, gay, bisexual and transgender (LGBT) students and to ensure their new dignity at work policy was understood by all staff, training was offered covering information on LGBT issues and harassment and dignity at work for all. It also covered appropriate and inappropriate language, touched on human rights and discussed some examples of different situations that might occasionally arise.

---

**The Law Society** supplier scorecard is a light-touch performance management tool designed to be used as part of standard contract management. It can be used to record evidence of a contractor’s equality policies and practices, aligned to their responses within the equality questionnaire, to assist institutions to demonstrate satisfactory standards on equality and diversity within their supply chain, and to identify and track progress on performance where evidence indicates a need for improvement.

Managing and monitoring contracts

Reviewing contracts

High-relevance contracts

To assess the success of the contract in promoting equality, institutions should review the contract as a whole as it nears its end. It may be helpful to return to requirements of the PSED and the institution’s equality strategy and objectives relevant to the contract, to assess whether the contract as a whole has assisted progress for the institution in meeting these goals. This will help identify how future contracts could be more successful in supporting the institution’s work to promote equality.

Consider whether:

- the specification could have been drafted differently to produce better outcomes
- different equality conditions of contract would have been more effective
- the monitoring or management of the contract could have been improved

Reviewing existing contracts

Existing contracts are also covered by new equality legislation including the Equality Act 2010, and the PSED where the contract is of high relevance, and may therefore need to be updated. Institutions should consider whether:

- there would be a breach of equality legislation if the contract remained unchanged
  For example, are the needs of newly protected people being taken into account or is monitoring across a broader range of characteristics required?

- a variation to the contract including new requirements could be negotiated

The training was offered over several sessions to allow as many staff as possible to attend. This included one session at 7am (to fit in with contracted staff working hours), which was translated into Spanish for South American cleaning staff. An LGBT student assisted the equality and diversity adviser in running the sessions. Feedback from staff was very positive.
Many institutions keep a list of approved or preferred suppliers that meet the requirements of their questionnaire, including those on equality. Some include their list and details of how suppliers can apply to be added to this list on their procurement webpage.

For institutions in England, Scotland and Wales, it is important to review supplier lists in light of the introduction of the Equality Act 2010 and the PSED to ensure suppliers approved under the previous legislation will still be able to deliver appropriately under the new legislation. While it may not be possible to require existing contractors to meet the requirements of a revised equality questionnaire part way through a contract, institutions could ask contractors if they would be willing to do this on a voluntary basis. When a contract is coming to an end and is up for renewal, the institution should communicate the new requirements to the contractor to give them time to prepare.
8 Supporting departmental or devolved purchasing

Institutions not only purchase goods and services centrally through their procurement or finance department, but also on a smaller scale in individual departments, such as academic schools.

This can make up a significant proportion of the institution’s purchasing, and so it is important that equality is also taken into consideration in this activity.

The procurement or finance department can play an important role in supporting departments within the institution to consider equality in their purchasing. Producing clear guidance on which purchases should be made via the central procurement process will ensure that larger purchases go through the formal procurement process and are therefore subject to the equality procedures in contract planning and the tender process where used.

Many institutions include this information on their procurement or finance website and some include it within their procurement policy.

**Nottingham Trent University** has developed a guidance note for staff in its purchasing department which outlines the university’s obligations under equality legislation to eliminate unlawful discrimination and also to promote equality in its procurement activities, and how it will go about this through its guiding principles and obligations in relation to purchasing covering access, advertisements, selecting suppliers, terms and conditions and specifications and how to determine whether a contract is highly relevant or not.

The guidance makes clear who is responsible for determining whether a contract is high relevance, advertising and checking suppliers’ capability to support the university’s duties under the legislation as follows:

- the purchasing department, for all tenders above the European procurement (OJEU) thresholds
- the purchasing department for all tenders of between £50,000 (plus VAT) and the relevant EU threshold, apart from estates tenders for works above this value, which will be the responsibility of the estates department
- the college, school or department for all requests for quotations below £50,000 (plus VAT)
9 Toolkit

Relevance assessment tool (adapted from the Open University tool)

The tool overleaf is designed to be completed horizontally considering, for each protected characteristic, the potential issues surrounding the contract as they relate to the three parts of the PSED, and how the contract can help overcome these.

Where there is little or no information available for any of the protected characteristics it may be necessary to record the likely or predicted issues/opportunities or to document the fact that there is currently insufficient, or no, information available.

Where issues/opportunities are identified, a record of the need for requirements to be included in the specification and contract conditions can be made in the final column.
<table>
<thead>
<tr>
<th>Protected characteristic</th>
<th>What evidence are you using to make your judgments/decisions?</th>
<th>Are there any ways that the contract can help to eliminate unlawful discrimination?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disability</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dependants/caring responsibilities (Northern Ireland only)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gender reassignment (Transgender)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marriage and civil partnership</td>
<td></td>
<td>Applies to employment-related contracts only</td>
</tr>
<tr>
<td>Pregnancy and maternity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Political opinion (Northern Ireland only)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Race – ethnicity, nationality</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Religion or belief</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sex</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sexual orientation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Protected characteristic</td>
<td>Are there any ways that the contract can help to advance equality of opportunity?</td>
<td>Are there any ways that the contract can help to foster good relations?</td>
</tr>
<tr>
<td>--------------------------</td>
<td>---------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------</td>
</tr>
<tr>
<td>Age</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disability</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dependents/caring</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Northern Ireland only)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gender reassignment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Transgender)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marriage and civil partnership</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applies to employment-related contracts only</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not applicable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not applicable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pregnancy and maternity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Political opinion</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Northern Ireland only)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Race – ethnicity, nationality</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Religion or belief</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sex</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sexual orientation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Introduction

In accordance with its commitment to equality and diversity and its responsibilities under the Equality Act 2010 of Great Britain as amended from time to time (the ‘Act’), the university/college requires its contractors to comply with the terms in this section.

1 The contractor will comply with the Act in its employment practices and service delivery under the contract. This includes not discriminating unlawfully on the grounds of the following protected characteristics recognised within the Act:

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

[NOTE TO INSTITUTION: If you provide information on unlawful discrimination and prohibited conduct you should insert a statement as to where that can be found here. For example: information on what constitutes unlawful discrimination and the services to be delivered under this contract can be found at [INSERT].]

2 The contractor will maintain an appropriate written equality and diversity policy in respect of the protected characteristics that covers unlawful discrimination and prohibited conduct in recruitment, selection, training, promotion and discipline and dismissal. The contractor shall communicate this policy to its staff and workers and take all reasonable steps to ensure their observance of it.
3 The contractor will comply with the Act in its dealings with
sub-contractors and will impose the obligations outlined in this
section of the contract on its sub-contractors.

4 The contractor will comply with the PSED under the Act for
goods and/or services provided to, and/or delivered on behalf of,
the institution, where it is relevant to the subject of this contract,
having due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation
  and other conduct prohibited by the act
- advance equality of opportunity between people who share
  a protected characteristic and people who do not
- foster good relations between people who share a protected
  characteristic and people who do not

Specific conditions relating to this duty are [NOTE TO
INSTITUTION: insert here where the specific conditions are
contained. For example: set out in appendix XX of this contract.].

5 The contractor will provide [by whatever means reasonably
specified by the institution] within [five] working days of receipt
of a request any information the institution reasonably requires
about its policies and practices concerning the promotion of
equality in employment and service delivery.

6 The contractor will monitor and report in writing the composition
of its employees by protected characteristic as specified by the
institution.

7 Where the contractor, contractor’s employees or its sub-
contractors work on the institution’s premises or alongside the
institution’s staff or students, the contractor will comply, and
ensure that its employees and sub-contractors comply, with the
institution’s own policies relating to equality and diversity. These
policies are supplied at [NOTE TO INSTITUTION: insert details].

8 Any breach of the conditions in this section by the contractor
will entitle the institution to take immediate remedial action
to prevent recurrence or in cases of material breach, to terminate
the contract.
Equality contract conditions model for Northern Ireland

University of Ulster Equality of Opportunity Contract Condition


The Contractor shall use their best endeavours to ensure that in their employment policies and practices and in the delivery of the services required of the Contractor under this agreement they have due regard to the need to promote equality of treatment and opportunity between:

- people of different religious beliefs or political opinions
- men and women or married and unmarried people
- people with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave)
- people of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997)
- people with and without a disability (within the meaning of the Disability Discrimination Act 1995)
- people of different ages
- people of differing sexual orientation
The Contractor shall take all reasonable steps to ensure the observance of the provisions of the above clause (1) by all servants, agents, employees, consultants and sub-contractors of the Contractor.
Model vendor questionnaire for England, Scotland and Wales developed with BUFDG PPG

**Instructions**

In order that we may make an assessment of your current equality and diversity status, please provide answers to the following questions in section 1. If relevant to what is to be delivered by the contract, the university/college may also require you to answer the additional questions in section 2.

Please ensure that any supporting documentation is clearly marked with the name of the respondent and the number of the question to which the response refers.

Note: If a question is not applicable to your organisation because it is a one person business (ie no employees except owner) select OPB when given that option.

**Equality legislation**

All organisations have statutory obligations under the Equality Act 2010. The Act replaces previous anti-discrimination law, consolidating it into a single act, and recognises the following protected characteristics:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race – this includes ethnic or national origin, colour or nationality
- religion or belief – this includes lack of belief
- sex
- sexual orientation
The university/college also has a PSED as part of the Equality Act 2010 which requires it to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- advance equality of opportunity between people who share a protected characteristic and people who do not
- foster good relations between people who share a protected characteristic and people who do not

The university/college must consider the three parts of this duty when making decisions as employers and education and service providers, and must ensure the organisations it contracts to deliver goods and services on its behalf will support it in meeting the duty.

1 Equality and diversity – general equality information. To be completed by all vendors

1 Do you have a written equality and diversity policy commensurate to the size of your organisation?
   YES/NO/OPB

   If YES, please attach

2 Does your equality and diversity policy cover:
   Race, gender, disability, gender reassignment, sexual orientation, age, religion and belief, marriage and civil partnership and pregnancy and maternity?
   YES/NO/OPB

   Recruitment, selection, training, promotion, discipline and dismissal?
   YES/NO/OPB

   Victimisation, discrimination and harassment making it clear that these are disciplinary offences?
   YES/NO/OPB
3 Can you ensure that your business complies with your statutory obligations under the Equality Act 2010 (which applies in Great Britain) or equivalent legislation which applies in the countries outside Great Britain in which your business operates?

This includes not unlawfully discriminating on grounds of race, gender, disability, gender reassignment, sexual orientation, age, religion and belief, marriage and civil partnership and pregnancy and maternity in the provision of goods, facilities or services to the public and as an employer.

YES/NO

4 In relation to what is to be delivered under the contract, is it your practice to promote equality in the provision of goods, facilities or services to the public to support the university/college’s compliance with its PSED under the Equality Act 2010, outlined above?

YES/NO

5 In the last three years has any finding of unlawful discrimination in ANY field been made against your business by the employment tribunal, the employment appeal tribunal, the county or other court or in comparable proceedings in any other jurisdictions or has your business been the subject of formal investigation that had a negative finding by relevant authorities (such as the Equality and Human Rights Commission) on the grounds of alleged unlawful discrimination?

YES/NO

If YES, please advise what the unlawful finding(s) was/were and what corrective actions have been taken by your business as a result.

6 In the last three years has any contract with your business been terminated on grounds of your failure to comply with either or both of:

= legislation prohibiting discrimination or
= contract conditions relating to equal opportunities in the provision of goods, facilities or services?

YES/NO
If YES, provide details of each occasion and state the corrective action you have taken and the action you have taken to prevent reoccurrence.

7 In relation to what is to be delivered under the contract, are you able to tailor your offering of goods and services to meet the needs of people with different protected characteristics?

YES/NO

If NO, please state why.

8 Do you observe, as far as is possible, the Equality and Human Rights Commission’s Codes of Practice for Employment, or equivalent code of practice or statutory guidance issued under equivalent legislation in countries outside of Great Britain in which your business employs staff?

YES/NO/OPB

For vendors who sub-contract

9 Do you require sub-contractors to confirm that they comply with their statutory obligations under the Equality Act 2010 and to demonstrate evidence of their equality policies and practices?

YES/NO

If YES, please provide details of what kind of evidence sub-contractors are required to submit

2 Equality and diversity – highly relevant contracts only

This section includes additional questions for vendors/potential vendors offering goods and/or services that are deemed to be highly relevant in relation to equality and diversity matters. Such contracts will include those where consideration of equality is core to the goods or services to be provided eg recruitment agency staff, training provision, services for students.

10 Is your approach to equality and diversity set out commensurately to the size of your organisation in:

= Instructions to those concerned with recruitment, selection, remuneration, training and promotion?

YES/NO/OPB
= Documents available to employees, recognised trade unions or other representative groups of employees? (eg induction, training, newsletters, web, etc).
YES/NO/OPB

= Recruitment advertisements or other literature?
YES/NO/OPB

= Materials promoting your products or services?
YES/NO/OPB
If YES to any of the above, please provide evidence.

11 Do you have a senior employee with responsibility for your equality policy and its effective implementation?
YES/NO/OPB
If YES, please provide the name and position

12 Are your staff with managerial responsibilities offered training on equality?
YES/NO/OPB

Is it mandatory for such staff to undergo this training?
YES/NO/OPB

13 What equality and diversity training is provided to non-managerial staff?
OPB

14 In relation to what is to be delivered under this contract, please provide examples of up to three equality and diversity initiatives that your business has undertaken in the last 12 months.

This may include membership of good practice programmes (such as Stonewall’s Diversity Champions programme, Investors in Diversity, Race Opportunity, Opportunity Now or the Two Ticks
Scheme, or equivalent programmes in countries outside Great Britain in which the business employs staff), initiatives targeted at increasing the number of candidates from different equality groups to apply for trainee programmes or promotion or formal engagement with staff and services users, such as employee network groups that represent equality groups.

OPB

15 Please provide details of workforce diversity monitoring data you have carried out in the last 12 months as it relates to the protected characteristics.

OPB

16 Do you have a bullying and harassment policy that gives explicit examples relating to the protected characteristics? If yes please provide evidence.

YES/NO/OPB

3 Equality and diversity – monitoring

This section will not be scored for the purposes of supplier selection. It is requested for the university/college’s own monitoring records to support compliance with the PSED.

1 Is your organisation an ethnic minority business as defined below?

= An ethnic minority business is where:

– 51% or more of which is owned by members of one or more ethnic minority groups, or
– if there are a few owners, where at least 50% of the owners are members of 1 or more ethnic minority groups.

YES/NO/NOT KNOWN (eg PLC, Mutual, Charity)/OPB

2 Do you monitor the ownership of your organisation in relation to the other protected characteristics?

YES/NO/OPB?

If YES, are you willing to provide this data?

YES/NO
Model vendor questionnaire for Northern Ireland

University of Ulster equality questions

1. Is it your policy as an employer to comply with all equality-related legislation, and is it your policy not to treat any one group of people less favourably than others because of their age, disability, gender, race, religion/belief, political opinion or sexual orientation?

2. In the last three years has any finding of unlawful discrimination been made against your organisation by any court or industrial or employment tribunal?

3. Does your organisation have a written equality policy?

4. Does your organisation train its staff in equality and diversity issues?
Further resources

- British Universities Finance Directors Group Procurement Professionals Group (BUFDG PPG formerly the BUFDG Procurement Professionals Group (formerly AUPO)
  www.bufdg.ac.uk/special/procurement

- BUFDG Procurement Professionals Group commodity coding risk analysis guidance. BUFDG. Loughborough.
  http://spce.ac.uk/knowledge_base_cat/resources/aupo_sustainable_procurement_guidance_and_documentation

  www.equalityni.org/archive/pdf/ECNIPublicSector0508.pdf

- Higher education library of procurement. Online resource.
  http://help.procureweb.ac.uk

- Procureweb higher education good practice guide. Online resource.
  http://help.procureweb.ac.uk/goodpracticeguide/euproclaw/index.html

  www.stonewall.org.uk/at_work/research_and_guides/4907.asp

- The further education library of procurement. Online resource.
  www.felp.ac.uk
ECU works closely with colleges and universities to seek to ensure that staff and students are not unfairly excluded, marginalised or disadvantaged because of age, disability, gender identity, marital or civil partnership status, pregnancy or maternity status, race, religion or belief, sex, sexual orientation, or through any combination of these characteristics or other unfair treatment.

Providing a central source of expertise, research, advice and leadership, we support institutions in building a culture that provides equality of both opportunity and outcome, promotes good relations, values the benefits of diversity and provides a model of equality for the wider UK society.

ECU works to further and support equality and diversity for staff and students in higher education across all four nations of the UK, and in colleges in Scotland.