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Acknowledgements

This research was commissioned by the Department for Work and Pensions (DWP). We would like to thank David Johnson, who acted as DWP's project manager during the exploratory phase of this project. We are also grateful to Pauline Heather, who took over as project manager for the rest of the research, and to Del Jenkins, the project director at DWP until his retirement in July 2009, for their generous comments on the research instruments and for organising and facilitating the steering group meetings; and to the steering group members as well for their helpful comments and suggestions about the drafts of the report.

We would like to acknowledge the help and co-operation we received from the many individuals in the pilot departments, and in the supplier organisations during the interviews for this research.

Apart from the authors of this report, a number of people at the Institute for Employment Studies (IES) and DWP were involved in the planning and execution of the research. Our deeply-felt thanks go in particular to Karen Patient, our team administrator, for heroic efforts in organising the fieldwork for this research; and also for co-ordinating the transcription of the interviews and ensuring the production of this report.

The individuals and organisations we acknowledge here bear no responsibility for the interpretation of their inputs and for any omissions and errors in this report. That responsibility is entirely ours.
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## Abbreviations and acronyms

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>CAQDAS</td>
<td>Computer Assisted Qualitative Data Analysis Software</td>
</tr>
<tr>
<td>DCSF</td>
<td>Department for Children, Schools and Families</td>
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<td>DWP</td>
<td>Department for Work and Pensions</td>
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<tr>
<td>EDU</td>
<td>Equality and Diversity Unit</td>
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<td>EMETF</td>
<td>Ethnic Minority Employment Task Force</td>
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<td>GLA</td>
<td>Greater London Authority</td>
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<td>IES</td>
<td>Institute for Employment Studies</td>
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<td>IPS</td>
<td>Identity and Passport Service</td>
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<td>LDA</td>
<td>London Development Agency</td>
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<td>LPM</td>
<td>Local Procurement Management</td>
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<td>NHS</td>
<td>National Health Service</td>
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<td>ODA</td>
<td>Olympic Delivery Authority</td>
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<td>OGC</td>
<td>Office of Government Commerce</td>
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<td>OJEU</td>
<td>Official Journal of the European Union</td>
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<tr>
<td>PQQ</td>
<td>Pre-Qualification Questionnaire</td>
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<tr>
<td>RR(A)A 2000</td>
<td>Race Relations (Amendment) Act 2000</td>
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<td>SME</td>
<td>Small and Medium Enterprise</td>
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<td>SPPT</td>
<td>Strategic Procurement Project Team</td>
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<td>SRM</td>
<td>Strategic Relations Management</td>
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<tr>
<td>TfL</td>
<td>Transport for London</td>
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<td>WWEG</td>
<td>Work, Welfare and Equality Group</td>
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Summary

The Procurement pilots are a new initiative introduced in 2006 to encourage procurers in the three Government departments – Department for Work and Pensions (DWP), Department for Children, Schools and Families (DCSF) and Identity and Passport Service (IPS) – to achieve better race equality outcomes when procuring services, by introducing new equality and diversity requirements in selected contracts with suppliers. The key finding from the evaluation undertaken by the Institute for Employment Studies (IES) was that the requirement did not cause suppliers any major difficulties. Although there is a way to go, progress made, especially in DWP, demonstrated how this initiative could be developed, and found a willingness in the three departments to take this up.

The departments have adopted different approaches to the development, design and implementation of the pilots. This is partly because the three departments have quite distinct procurement structures and strategies; which have also determined their selection of the pilots projects, the involvement of key personnel, and specification of the equality requirements. The pilot projects selected are the New Deal programme at DWP; the provision of Children’s Centres at DCSF; and the provision of Learning and Development at IPS. Pilot activity is limited to these specified areas. The pilot departments have developed separate infrastructures to implement the initiative; and by the end of this evaluation, the pilots had been implemented fully at DWP and DCSF, and only partially at IPS. Notably, the Office of Government Commerce (OGC), although part of the steering group, has not been involved in developing or promoting the pilots.

The assessment of current practice in the departments where they have been implemented shows that the pilots are well known among senior officials. But there is little evidence that the initiative has been disseminated extensively within the departments. Consequently, there is limited awareness among contract managers about the intent of the equality requirements that have been introduced in new contracts.

Contract managers are responsible for ensuring that contractors and suppliers are compliant with the new equality requirements. Part of that responsibility requires them to provide help and support to suppliers if they have difficulty meeting the
requirements. From current practice, it is clear that there are quite varied levels of skills and experience on diversity and equality issues among contract managers. Resource constraints appear to also act to limit the amount of support which can be provided.

Although suppliers have, similarly, low awareness of the wider aims of the pilots, they were nevertheless generally aware of the requirements themselves. For DWP suppliers, compliance with the requirements is a necessary condition for their accreditation as a preferred contractor. This accreditation must be in place before a contract can be awarded to a supplier. Contract managers were clear that their approach was to encourage contractors to reach these standards, not exclude them. DCSF suppliers tended to regard the new requirements as standard practice. Partly because of these expectations, none of the suppliers appeared to have any difficulties meeting the requirements.

There is ongoing monitoring of the requirements at DWP, but not at DCSF. At DWP initial monitoring has been subcontracted to an intermediate supplier, which carries out the function as part of the wider accreditation process. Once the contract is awarded, the monitoring responsibility passes from the intermediate supplier to procurement contract managers in the department. It is clear from discussions with pilot staff, however, that in practice there is little routine monitoring of the requirements once contracts are in place. The principal reason for this is that contract managers prioritise delivery of the subject of the contract above all other considerations, including the equality and diversity requirements. But some DWP contract managers had worked with suppliers who needed additional support; and had temporarily suspended one contractor, who consistently failed to meet the equality and other requirements.

The overall impact of the Procurement pilots appears to have been limited to date, and has also varied across the pilot departments and among suppliers. From the point of view of departments, DWP has put systems in place to collect information from suppliers, which could have a beneficial impact as part of a broader process for improving service delivery in the future. At DCSF, which has a much more devolved procurement structure, systems which would enable such monitoring are not in place.

The pilots have had limited impact on suppliers, mainly because they were already doing much in their existing and past contracts that was in line with the demands of the new requirements. Consequently, suppliers have not found the requirements burdensome, and have not reduced their tendering activities in response. The formal introduction of the new requirements has also encouraged some suppliers to review and update their equal opportunities policies. However, some suppliers would like additional support or assistance to help them meet the requirements. Their suggestions for improvements include the need for the requirements to be given greater prominence during the tendering process and for additional guidance on developing equal opportunities policies for smaller businesses.
There is ongoing debate within the pilot departments about the role of public procurement in social policy, in particular about the extent to which public procurement can be used to effect change in organisations outside the public sector. There are also mixed views currently among pilot department staff about the use of contract compliance, in particular to raise the levels of ethnic minority employment in supplier organisations. On the other hand, there was broad support among suppliers about the use of public procurement to achieve the Government’s wider agenda on equality and diversity.
1 Introduction

This draft report presents the findings from research commissioned by the Department for Work and Pensions (DWP) to evaluate the effectiveness of the Ethnic Minority Employment Task Force Race Equality Procurement pilots (hereafter referred to as the ‘Procurement pilots’ or ‘pilots’).

1.1 Aims and objectives of the Procurement pilots

The Procurement pilots were initiated by the Ethnic Minority Employment Task Force (EMETF), a ministerial team responsible for co-ordinating the Government’s strategy to reduce ethnic minority disadvantage in employment. An important role of the Task Force is to oversee Government efforts to address the problem of disproportionate disadvantage that ethnic minority groups face in the labour market. That disadvantage is indicated by the wide gap in the employment rates between ethnic minorities and all working age people in employment in the UK. The wider role for the Task Force is to ensure that over the medium term (by 2013), ethnic minorities do not continue to face disproportionate barriers, and that there is a narrowing of the gap between the employment rates of ethnic minorities and the overall rate.

The Task Force is seeking to improve equal opportunities in employment, specifically through measures which promote equality in the workplace. Among the strand of measures to improve equal opportunities in the workplace are initiatives aimed at influencing businesses and employers to make changes to practices that tend to discriminate against ethnic minorities and contribute to their continued disadvantage in the labour market. Public procurement has been identified as an effective means of influencing business behaviour.1 In particular, the public sector’s collective annual spending of over £175 billion on goods and services from the private and voluntary sectors, is seen by the EMETF as a significant lever with which to effect change in business and employer practices. The use of the

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procurement lever has been recognised in a recent report which recommended that: ‘Government, through its position as the UK’s major purchaser, use its leverage over, and relationships with, private sector companies to motivate the private sector to promote race equality.’ The EMETF has, subsequently, agreed to champion a change in the treatment of race equality within employing organisations by exercising Government’s purchasing power in public sector procurement.

1.2 The remit of the pilots

The EMETF has supported a period of promoting race equality when procuring from private sector suppliers, in a small number of Government departments. The principal aim of these Procurement pilots was to enhance race equality in procurement in three government departments – DWP, Department for Children, Schools and Families (DCSF) and the Identity and Passport Service (IPS), an agency of the Home Office. This would be achieved mainly by encouraging suppliers to make real changes in their practices, but also providing support to small businesses in order to increase the diversity of suppliers at the same time.

The pilot departments were tasked to develop and test models for their procurers to achieve better race equality outcomes when procuring goods, works and services. The expectation was that procurers would do this by working with suppliers in selected contracts, and assisting them to improve their approach to workforce equality and diversity. It was hoped that this would, in turn, encourage suppliers to make changes in practices that would lead not only to an increase in the diversity of their workforces, but also improve their service delivery to ethnic minority groups. The specific means by which changes would be achieved was through compliance with new conditions in their contracts. The revision of the terms and conditions in the selected contracts would require suppliers to take action to promote race equality by developing equal opportunities policies, and by providing information on the ethnic composition of their workforce.

It was hoped that the implementation of the pilots would also contribute towards the development and enhancement of new skills among the pilot department staff involved at different stages in the procurement process, to enable them to apply race equality considerations in their procurement. This would be done through guidance aimed at increasing the capacity of procurement staff to interact with, and advise suppliers on equality issues, and to effectively assess their compliance with the new requirements.

A research study commissioned by the EMETF in 2005 produced a framework which set out the allowable actions to promote race equality at each stage of the procurement process. The framework was intended to provide further guidance to

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2 Op. cit., 60/76.
staff in Government departments who are engaged in the procurement of goods and services from external suppliers. It was hoped that the pilot departments would use the framework as a suitable basis for developing their own structures to implement the Procurement pilots.

1.3 Aims and objectives of evaluation

It was against the background set out above that DWP was seeking research information that would enable the department to learn as much as possible from the pilots. The overall aim of the evaluation, therefore, was to provide evidence of the extent to which the pilots were meeting their wider objectives of, among others:

• increasing the capacity of procurement staff to deal with a diverse range of suppliers;

• increasing the diversity of suppliers’ workforces overall; in particular, encouraging suppliers to take more cognisance of the racial diversity of their workforces;

• ensuring that suppliers increase their awareness of diversity, leading to changes in their practices;

• assessing the extent to which departments are able to use procurement to help raise the ethnic minority employment rate.

The evaluation design adopted a two-phased approach:

Phase 1, which ran from January to late May 2008, was mainly exploratory, and involved desk research, incorporating a literature review; followed by initial discussions with key informants involved in the development of the pilots, to provide early insights into how they were being designed and implemented in the three departments. For this stage of the evaluation, the research was expected to ascertain what information was available, and how further information might be generated from the pilot departments. From the pilot departments, it was important to:

• establish what the main requirements of the compliance provisions in the procurement process were, with regard to applying race equality considerations;

• assess the different approaches, both advantageous and disadvantageous, to contract management that promoted race equality in procurement and achieved real change in suppliers’ practices;

• assess how the compliance provisions were weighted against other commercial considerations.

The interim report from Phase 1, which was completed and submitted to DWP in July 2008, made recommendations for research that could be pursued in a second phase research.
Phase 2 of the research was formally agreed with DWP in late 2008. The main aim of the second stage of the project was to present evidence, and an assessment of the extent to which the pilots were meeting their wider objectives of:

- ensuring that suppliers have increased their awareness of diversity, leading to changes in their practices;
- increasing the diversity of suppliers overall;
- increasing the capacity of procurement staff to deal with a diverse range of suppliers, and providing appropriate support to help them make changes in their practices;
- identify areas of effective practice among the pilot departments, which could be disseminated more widely across Government.

1.4  Research methodology

The research methodologies adopted for this work comprised three discrete parts:

- desk research, to incorporate a literature review;
- qualitative research with pilot department staff and other stakeholders;
- qualitative research with suppliers.

1.4.1  Desk-based research

The desk research drew together existing information on procurement policy and practice within Government departments, in order to contextualise the study, and help in the design of research tools to inform discussions with stakeholders. In the early stages of the study this included a review of research and other evaluation reports undertaken by Government departments. This stage also reviewed examples of effective practice in organisations outside central government departments, in both the public and private sectors; including, for example, local government, the NHS, the Greater London Authority (GLA) and Transport for London (TfL).

The main focus of the desk-based research was a review of the literature on procurement. In particular, the review was extended to examine international evidence on the use of procurement by public authorities in Europe, Canada and the United States to get businesses and employers to introduce equality measures in their organisations.

This stage of the research was also intended to look at the procurement documentation accompanying the establishment of the pilots; in particular aspects of the contracts setting out the specific requirements for buyers and suppliers. Given the likely differences in the priorities and emphasis the pilot departments would place on compliance with the requirements, the results from this review were expected to contribute evidence towards the debate.
1.4.2 Fieldwork with pilot staff

A rolling programme of face-to-face interviews was undertaken with a range of staff at the pilot departments. These included procurement specialists, functional (policy) heads, equality and diversity specialists, and contract managers and other project management staff. There were, additionally, interviews with intermediary contractors of DWP and officials at the Office for Government Commerce (OGC).

1.4.3 Fieldwork with suppliers

A series of face-to-face interviews was, similarly, undertaken with suppliers (contractors) of DCSF and DWP. It was agreed with DWP that the sample would be drawn from lists provided by contract managers at the two departments.

Table 1.1 shows the number of formal interviews undertaken in the qualitative research.

**Table 1.1 Formal interviews undertaken for Procurement pilots evaluation**

<table>
<thead>
<tr>
<th></th>
<th>Pilot staff</th>
<th>Suppliers</th>
<th>Other stakeholders</th>
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<tbody>
<tr>
<td>DWP</td>
<td>15</td>
<td>16</td>
<td>3</td>
</tr>
<tr>
<td>DCSF</td>
<td>4</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>IPS</td>
<td>3</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>22</td>
<td>22</td>
<td>4</td>
</tr>
</tbody>
</table>

Source: Institute for Employment Studies (IES).

1.4.4 Analysis

All the interviews for the qualitative phase were recorded and transcribed, and then coded thematically and analysed in Atlas.ti, a Computer Assisted Qualitative Data Analysis Software (CAQDAS) package.

Following this introduction, the report is structured as follows:

Chapter 2 presents findings from the literature on contract compliance and procurement. The first part of the chapter focuses on the general literature, while the second part highlights issues from the literature.

Chapter 3 looks at the policy environment for procurement in the pilot departments, in particular the application of race equality considerations.

Chapter 4 describes, and draws out, the essential features of the way the pilots have been implemented.

Chapter 5 deals with issues from current practice from the pilots, from the perspectives of both the pilot departments and their suppliers.
Chapter 6 focuses on the monitoring arrangements for the pilots.

Chapter 7 assesses the overall impact of the Procurement pilots at the pilot departments, and on suppliers.

Chapter 8 discusses the broader views of pilot department staff and suppliers on the procurement and equality.

Chapter 9 draws together some of the key findings and issues from the pilots, and the lessons emanating from these.
2 The role of procurement in meeting race equality targets: a literature review

2.1 Introduction

There are a variety of possible approaches to addressing issues of race equality in the labour market. In the US, affirmative action policies of various types have been used for over three decades, including preferential hiring policies for under-represented groups which would be illegal in a UK context. There are strongly divided opinions on preferential treatment policies. Some believe the approach may undermine advances made by affirmative action policies (Noon, 2005; Wrench, 2005) and can create a backlash effect (Dhami et al., 2006). Others have argued that while not perfect, these represent the best methods available to improve the position of ethnic minorities in the labour market (Beauchamp 1997; Anderson, 2002).

Contract compliance, where public authorities specify social criteria that must be met by contractors for Government contracts, faces fewer legal constraints and is widely regarded as the most effective of affirmative action policies. It is viewed as particularly well suited to changing employer practices with ‘minimum pain and resistance’, improving both initial recruitment rates for ethnic minority groups and their subsequent retention (Dhami et al., 2006). In addition to the direct impact on companies which are affected by contract compliance, such policies are argued to have a much broader indirect effect on good practice, by a process of diffusion (Reskin, 1998). The Business Commission on Race Equality (National Employment Panel, 2007) has made a strong recommendation for the Government to use its leverage as a major UK purchaser. Its argument is that voluntary approaches have failed, and that in the absence of a private sector legislative duty to promote race equality, this is a necessary step if the ethnic minority employment gap is to be effectively addressed:
‘Business will accept a strong lead by Government. But that lead has to be expressed in more than words, or very few businesses will follow.’

The underlying premise is that if socially responsible objectives are built into the procurement process, then businesses will be compelled to address these issues before being awarded lucrative public contracts. This will, in turn, help to reduce the labour market disadvantage experienced by ethnic minorities and other marginalised groups in society. Such policies have not, to date, been widely adopted in the UK, and the pilots being evaluated in this report therefore represent an important learning opportunity. This chapter briefly reviews the evidence from abroad (US, Canada and The Netherlands), Northern Ireland and Great Britain, looking at the legislative framework, examples of policies adopted, outcomes, and factors necessary for success.

2.2 International evidence

Initiatives for ethically responsible procurement have been explored in a number of countries including The Netherlands, Canada, Northern Ireland, and the US. Unsurprisingly, initiatives concerned with race equality have generally been developed in countries with high immigration levels and ethnically diverse populations (Coussey, 2002; Jain, 2001). Policies have had a different focus depending on the prevalent labour market and equality issues in each country. For instance, in the US the debate has largely centred on gender and ethnicity in the fields of education and employment, particularly college entry, whereas in Northern Ireland affirmative action policies have tended to focus on religion and employment.

2.2.1 US and Canada

US initiatives have been successful in increasing employment opportunities for disadvantaged groups within the labour market, particularly pertaining to race and gender, where Portes notes a small but measurable increase in employment rates for ethnic minorities. Holzer (cited in Dhami et al., 2006) estimates that affirmative action is responsible for increasing the employment rates of African Americans by one to two percentage points, and that ethnic minorities in these firms have earnings between five and 20 per cent higher than they would in companies without such policies.

Canada has adopted very similar contract compliance procedures to the US since the introduction of the Employment Equity Act in 1995, which revised the earlier 1986 Act. In the private sector firms covered by the original Act, representation of visible minorities doubled between 1987 and 1999, from just under five to almost ten per cent, but only about one in seven firms are covered by the requirements of the Employment Equity Act and Federal Government Contract Compliance procedures, thus limiting the broader impact of the policy.
2.2.2 The Netherlands

In The Netherlands, contract compliance has not been adopted, but instead a series of non-binding covenants were introduced between governments, trade associations and business. These were small-scale initiatives in which covenants directed contact between employers with vacancies and labour exchanges with access to ethnic minority populations. Evaluations suggest that these have been effective, but that it is difficult to determine effects net of the business cycle (Dhami et al., 2006).

2.2.3 Northern Ireland

In Northern Ireland, public procurement is a devolved function of the Northern Ireland Executive. It provides an interesting comparison, as there is a legislative duty on private sector employers (for those employing 25 or more people from 1990, and those employing 11 or more from 1992) to register with the Equality Commission under the Fair Employment Act, and complete an annual monitoring return regarding the composition of their workforce. Evaluations demonstrate that between 1990 and 2005 the Roman Catholic share of the workforce had increased by over seven percentage points, although it is not possible to separate the impact of the legislation from wider legal and social policy changes which may also have contributed to this trend (Equality Commission for Northern Ireland, McCrudden et al., 2004).

Another scheme in Northern Ireland, the Employment Plan, was a small-scale pilot that required contractors to hire unemployed people if they were successful in their bid. Around two-thirds of those surveyed said that this had not deterred them from tendering, suggesting that it was unattractive to a sizeable minority of contractors. Those who had taken part reported that the requirements quickly become embedded as part of their contracting culture, suggesting that their impact would persist over the longer-term, and very few reported additional direct costs. Around a third of clients reported additional workload as a result of the pilot, but the remainder identified no significant impact on workload.

2.3 UK initiatives

The use of procurement initiatives promoting both value for money and social responsibility is becoming gradually more widespread in the UK, but has not yet generated a large evidence base.

Since the 1980s, local authorities have been permitted to ask six standard race equality questions at the pre-qualification stage (National Employment Panel, 2007). From 1983 to 1989 the former Greater London Council (GLC) and Inner London Education authority (ILEA) operated a policy which required approved bidders to demonstrate that they were in compliance with equality legislation. Impact was measured by changes to equal opportunities policies and practices, although no data on ethnic minority employment levels were recorded. Of 152
companies, less than two per cent were fully compliant with equality legislation at the start of the process. By the end close to half (44 per cent) had improved their procedures, for instance by ensuring that job application forms were non-discriminatory (National Employment Panel, 2007).

In the late 1990s, six local authorities in the West Midlands worked with the Commission for Racial Equality to implement a ‘Common Standard’ on race equality for their contractors. This operated at the pre-qualification stage, and therefore meant that all of those tendering had to meet the requirements, rather than only those who were successful in being awarded contracts. While some contractors found that this did not involve any changes to their existing practice, for others there was a major impact on raising the profile of race equality. For firms that already had an equal opportunities policy in place, the requirements encouraged them to review, update and revise the policy. However, it was not possible to measure the impact on workforce composition, due to the absence of ethnic monitoring (Orton and Radcliffe, 2003).

One of the most prominent public sector examples currently operating is the East London Line Project (ELLP) for TfL, which made equality a condition of contract for this very large project, meaning that bidders are only accepted onto the final stage of tendering if they can demonstrate that they can deliver equality and supply chain diversity. This has involved close and early engagement with bidders, with TfL acting as a broker between contractors and community stakeholders, such as training organisations providing workers. Despite some initial resistance, there has been a very positive response by contractors, and best practice from ELLP has been used for all subsequent supplier diversity initiatives at TfL (Godwin, 2009). Ethnic monitoring has also been put in place to enable outcomes to be monitored over time. This project was part of a wider initiative implemented by the GLA to ensure that more minority-owned businesses win large public contracts. The evidence from the case studies, which also included a number of capacity building initiatives for suppliers, indicated that adopting this type of procurement system can effectively diversify the supplier base and improve employment opportunities for groups currently penalised in the labour market (GLA, 2008).

Another example of using procurement to meet diversity goals is the MOSAIC scheme for the NHS, established in 2004. This was an initiative funded by the Department of Health’s Equity and Human Rights group and led by the South East London Strategic Health Authority. This piloted a number of different approaches to procurement to see which was the most successful. Results were reported as a series of 15 case studies intended to provide lessons for the NHS as a whole. There was a great deal of diversity in these approaches. Examples include information and capacity-building sessions for potential third sector contractors in Leicester (as it was recognised that these have better access than the statutory sector to some ethnic minority communities), checking that contractors in Cornwall, where there are very low levels of ethnic diversity, had integrated race equality issues into their approach, carrying out an Equality Impact Assessment in South West
London Purchasing Alliance, and working with a social enterprise in South London to develop more appropriate food supply for minority ethnic groups (Department of Health, 2007). Guidance on basic, intermediate, and advanced requirements at each stage of the procurement process was developed in the form of a ‘balanced scorecard’ for NHS organisations to be used to record a baseline and develop race equality targets for procurement activity (Department of Health, 2007).

The most high-profile recent example is that of the Olympic Delivery Authority (ODA), which has a strong commitment to equality and inclusion, and to promoting this throughout the supply chain (ODA, 2007a, 2007b). This involves the inclusion of a standard set of equality and diversity questions as part of a balanced scorecard, advertising ODA contracts on the CompeteFor website (www.competefor.com), and working with potential suppliers, for instance by the use of buyer events and other outreach activity. Experiences to date show a mixed picture. While the CompeteFor site and buyer events have increased awareness of Olympic tendering opportunities, suppliers would like to see greater detail in project specification and feedback on unsuccessful tenders, and those who have been successful so far have been contractors with previous experience of winning tenders from public sector organisations (Smallbone et al., 2008). Competing priorities, especially the particular importance of time and budget delivery deadlines for this project have meant that equality issues have tended to be a relatively minor consideration in practice. In addition, most work opportunities for small and medium sized enterprise (SMEs) (which make up 96 per cent of establishment in each of the five Olympic host boroughs) will occur at lower tiers of the supply chain, and closer to 2012 (Smallbone et al., 2008). The ODA itself has quite limited influence over such opportunities.

2.4 Potential impact

The evidence base for the business case is still relatively small. The literature generally consists of studies exploring the success of a single organisation’s procurement policy. This makes it very difficult to generalise the results as the goods and services procured by one organisation are likely to differ significantly from those procured by another, and may be associated with very different workforces. It is also difficult to disentangle some results from the effects of the economic cycle, the impact of individual anti-discrimination legislation and the broader policy environment. However, there is a general consensus (NHS, 2008; Cartwright; 2001, Morgan and Cruz, 1997; Ram 2002; GLA, 2008) that the benefits of building equality goals into procurement and business practices include:

- increased diversity in supplier base;
- development and implementation of equal opportunity policies;
- increased diversity in workforce composition;
- increased flexibility and creativity in the workforce;
• reduced costs on tribunals and disputes;
• diversification of the customer base, leading to increased sales;
• companies that are more able to meet the needs of a diverse community;
• reduced discrimination, which may in turn have a positive impact on staff morale and levels of sickness absence and help retain key staff in a tight labour market;
• increased competition, which has the potential to increase value for money.

The business benefits of increasing ethnic diversity in recruitment have often been conflated with the business benefits of procuring contracts to SME suppliers, a category into which many minority-owned businesses fall. A survey completed with 529 ethnic minority businesses found 84 per cent had between one and five staff, with only two per cent having more than ten staff (Focus Central London, 1999). The 2004 Gershon Review explored the public sector's ability to deliver value for money while ensuring that public services pursue environmental and social objectives. The review made several references to the role of SMEs in this process, particularly with regards to procurement. The advantages of having a number of suppliers who are SMEs have been reported as:

• SMEs usually have lower administrative overheads and management costs than larger firms and these lower costs can be passed onto the contractor;
• SMEs tend to have shorter management chains and approval routes, so they are more able to respond quickly to changing needs of the procurer;
• being a large customer of an SME can result in a better and a more personal level of service, creating a better relationship with the supplier;
• SMEs may be more willing and able to tailor a product or service to meet specific customer needs;
• SMEs can help bring innovation and higher quality specialist services through new technology, or they can provide products or services in new or underdeveloped markets.

These examples come from the GLA (2008). They are based on their findings from running a system designed to improve diversity in procurement as part of a wider system of responsible procurement developed for all the services that they oversee. Another benefit is that it promotes an ethos of respect and fairness in an organisation, improving staff motivation and increasing productivity (Centre for Strategy & Evaluation Services, 2003).

Ram et al. (2002) argue that opening up procurement processes to a wider range of providers provides longer-term viability and increased competition for contracts. Ram et al. also highlight additional benefits to ethnic minority communities such as access to professional and organisational networking, skill development, and a greater understanding of market opportunities. Despite the small amount of
research undertaken to date, there is a strong suggestion that ethnically diverse procurement has the potential to benefit both businesses and the disadvantaged communities from which they hail.

2.5 Potential issues and problems

Despite the positive messages reported on ethically diverse procurement, there is potential for negative outcomes. The US took a very proactive approach to positive action policies and developed a system of preferential treatment, making allowances for certain groups in an effort to recognise previously experienced disadvantage. An example of this would be to apply quotas for a position or to take on a less-qualified individual for a post on the basis of ethnicity. The large number of legal challenges that have been mounted in the US regarding the preferential treatment of ethnic minority businesses in public procurement is a reflection of the unpopularity of this policy, and lends weight to the UK rejection of such approaches (Dhami et al., 2006).

Concern about costs, including direct costs such as the development of HR staff to deal with the more complicated issues and the designing of new policies and indirect costs such as the diversion of staff time (particularly at a high level), a risk of lower productivity initially, and increased business risk is fairly widespread (Centre for Strategy & Evaluation Services, 2003). However, the evidence from overseas suggests that these may be misplaced. There is limited evidence regarding efficiency effects, but Portes found no evidence to suggest any negative impact on efficiency, and the Clinton affirmative action review similarly found no negative effects on productivity.

2.6 Success factors

Dhami et al. (2006) highlighted the important role that can potentially be played by contract compliance, but identified a number of key factors which are required if they are to succeed. These include:

• political will;

• economic rationale for the business case;

• enforcement mechanisms, including the strengthening of individual anti-discrimination legislation as well as sanctions on non-compliant employers;

• attention to both the supply and demand side, with employer action alongside the promotion of skills and training for ethnic minorities and immigrants;

• a lack of bureaucracy.

Some of these findings are echoed by the results of a survey by Michaelis et al. (2003) evaluating how far three Government departments had progressed in their
objective to bring more SMEs into the procurement process. Small businesses who had won Government contracts highlighted some of the issues that they faced. These were:

• an assumption by suppliers that Government departments prefer large providers;
• lack of capacity to meet complex or bureaucratic documentation requirements;
• a lack of knowledge on how to get information or who to contact;
• an assumption by suppliers that Government departments were only interested in the cheapest quotes;
• marketing ability – many SMEs lacked adequate resources to dedicate to marketing duties.

Many of the businesses surveyed felt that the Government could give them more help to win public contracts. The researchers noted that organisations that had tendered for the contract and had not been successful, or had not tendered at all, may have had different, and possibly more negative, opinions on this process. In London several initiatives have been developed to meet these kinds of needs among SMEs, including the London Development Agency’s (LDA) Supply London workshops and toolkit and TfL’s ‘Meet the Buyer’ events. The LDA is developing a one-stop shop for suppliers and a suppliers’ forum where organisations can share issues and opportunities (GLA, 2008).

There is some evidence that suppliers regard procurement policies more favourably when they target all disadvantaged groups, and not only ethnic minorities (Dhami et al., 2006). Systems that allow the contractor to fulfil the requirements of more than one commissioning body (e.g. several local authorities or Government departments) via a single process are also popular (Orton and Ratcliffe, 2003), and reduce the burden on suppliers.

Much of the current evidence is qualitative, based on different cultural approaches in the contractor’s organisation, and reliant on case studies within businesses, departments or projects. There is, at present, a shortage of quantitative evidence, especially experimental data (Centre for Strategy & Evaluation Services, 2003; Dhami et al., 2006; Portes). A lack of clarity regarding what exactly constitutes a diverse workforce can also add to the difficulty of establishing success quantifiably. As noted above, a failure to record adequate ethnicity data in workplaces can also make it impossible to measure the impact on workforce composition (Orton and Ratcliffe, 2003) as can workplace mergers and transfers, which are common in some sectors.
2.7 Conclusions

This chapter has briefly reviewed the literature on addressing equality issues via procurement processes. There have been a number of international and UK initiatives aimed at addressing equality in procurement. None, apart from the preferential treatment policies adopted in the US, have identified any serious negative impacts. However, although they have identified a range of benefits, their positive impact has tended to be difficult to quantify.
3 Key policy issues in procurement

As discussed in Chapter 2, the idea of using procurement processes to achieve equality goals has been supported by a number of different legislative and policy developments within the EU and the UK.

3.1 The legislative framework

3.1.1 EU legislation

The Treaty of Rome (1957) introduced the free movement of goods and services across the European Community. The World Trade Organisation developed a Government Procurement Agreement in 1996 covering similar aspects to the Treaty of Rome, which emphasised fairness, transparency, and negotiation in the procurement process. This agreement was updated in 2006 to cover newer forms of procurement such as e-procurement. Additions to the legislation regarding procurement policy have included a number of EC directives including procurement of utilities such as water, energy, transport, and telecommunications (EC directive 2004/17/EC) and services procured through public contracts (EC directive 2004/18/EC). Over time, legislation aimed at improving racial equality was introduced. The Race Equality Directive (2000/43/EC) stated that it was a basic human right to have equality before the law and to be protected from discrimination, and contains clauses regarding access to goods and services.

3.1.2 UK legislation

The UK Race Relations (Amendment) Act (2000), which was introduced in response to the 1999 McPherson report, and the Race Relations Act 1976 (Amendment) Regulations 2003, which met the requirements of the EU Race Equality Directive, placed responsibility on all public bodies to outlaw any form of discrimination, and included a section on procurement activities. More recently, additional public sector equality requirements in respect of disability and gender introduced by the Equality
Act 2006 mean that public bodies must also eliminate unlawful discrimination and harassment and promote equality of opportunity for these groups in all areas of activity, including procurement. Although the public sector duties are broadly similar, they differ slightly for each equality strand.

- The Disability Equality Duty requires public bodies to:
  - promote equality of opportunity for disabled people;
  - eliminate unlawful discrimination;
  - eliminate disability-related harassment;
  - promote positive attitudes towards disabled people;
  - encourage participation by disabled people in public life.

- The Gender Equality Duty requires them to:
  - eliminate unlawful discrimination (including under the Equal Pay Act) and harassment;
  - promote equality of opportunity between men and women.

- The Race Equality Duty requires them to:
  - eliminate unlawful racial discrimination;
  - promote equality of opportunity and good relations between persons of different racial groups.

The disability duty is also different from the others in that it allows ‘more favourable treatment’ in order to address the inequalities faced by disabled people. In terms of procurement, this means that positive action policies are allowed to meet disability equality goals, but not for the other strands. More generally, equality issues are to be given ‘due regard’ in the procurement process, meaning that the weight attached to them should be proportionate to the relevance of the equality issues to the procurement in question (Office of Government Commerce (OGC), 2008).

The Single Equality Bill currently going through Parliament brings all these duties together and introduces secondary legislation aimed at addressing inequality arising from socio-economic disadvantage. It also proposes, through secondary legislation, to address equality issues in procurement. (McCrudden, 2009; www.equalityandhumanrights.com).

### 3.2 The role of the Office of Government Commerce

The Office of Government Commerce (OGC), an independent office of HM Treasury, was established in 2000 to improve the efficiency and value for money of Government spending. A saving of £5.5 billion had been made up to September 2006, at least part of it attributable to improved procurement practices (HM
Treasury, 2007). The OGC’s role is defined as working with central Government departments and other public sector organisations to ensure the achievement of six key goals (www.ogc.gov.uk):

- delivery of value for money from third party spend;
- delivery of projects to time, quality and cost, realising benefits;
- getting the best from the Government’s £30bn estate;
- improving the sustainability of the Government estate and operations, including reducing carbon emissions by 12.5 per cent by 2010/11, through stronger performance management and guidance;
- helping achieve delivery of further Government policy goals, including innovation, equality, and support for small and medium enterprises (SMEs);
- driving forward the improvement of central Government capability in procurement, project and programme management, and estates management through the development of people skills, processes and tools.

There has tended to be a perception of OGC as concerned with value for money to the possible exclusion of a range of issues of social concern, because of the organisation’s position within HM Treasury. In the interviews with stakeholders, this was widely recognised as an issue which had limited the potential to address equality issues through procurement in the past.

However, more recently there have been moves to address social issues in public procurement. In 2006, the OGC issued guidance in the form of a booklet, *Social Issues in Procurement*, which outlined the scope of what is and is not permissible from a legal standpoint. This was a first step to setting out how social issues can be addressed in public procurement in a way that is consistent with procurement law. To some stakeholders, the amount of technical detail and the studied neutrality of the tone adopted were not seen as particularly encouraging of attempts to include social objectives in the procurement process; and they felt that greater clarity was needed.

More importantly in the last few years, and working closely with the Government Equalities Office, the OGC has provided a strong steer towards pushing these issues up the agenda. An OGC-led cross-Governmental working group met throughout 2008, which culminated in extensive consultation with stakeholders, and was followed by the publication of a practical guide for procurers, *Make Equality Count*. The publication is aimed at providing advice to procurers, and is illustrated with practical examples of when and how equality-related issues can be incorporated at the different stages of the procurement process. This document has been generally welcomed by stakeholders as much more user-friendly in style. OGC believes it provides greater clarification on what the existing public sector equality duties mean in the context of public procurement.
OGC is supportive of using public procurement to further wider policy objectives where these are relevant to what is being bought and where it achieves value for money and is done in a way that is consistent with procurement law. However, with the vast range of policy agendas relating to procurement, OGC believes that a balanced approach is needed to ensure consistency in the way that these policy objectives are addressed. OGC is currently working on bringing these agendas together to help achieve a consistent, more joined-up approach, and with measurable outcomes across Government.

Following the publication of Make Equality Count, OGC has produced a series of practical guides for procurers, with advice on how they can incorporate various policies into their procurement activities. OGC is currently planning to build on Make Equality Count, with the development of an Equality Toolkit.

It was notable that few of the respondent senior policy officials in the pilot departments who were interviewed as part of this evaluation research made specific reference to the role of the OGC in the development, design and implementation of the Procurement pilots. However, most also expressed sentiments that were not dissimilar to the OGC perspective, and highlighted what they considered to be lack of clarity in the policy debate on the use of procurement processes to meet equality goals.

3.3 Conclusion

This chapter has briefly reviewed the legal and policy framework which shapes opportunities to address equality issues in procurement. There is a growing emphasis on equality in procurement. Recent (and forthcoming) legislation should strengthen this and help to clarify what is and is not permissible in this area. However, at the time the pilots were designed and implemented, the operating context was a lack of clarity about the legal position.
4 Implementation of the pilots

This chapter sets out some of the important features of the development and design of the Procurement pilots. Given that the pilots were seeking to deliver a new initiative across departments which have quite different procurement strategies and structures, it is important to set out the implementation process in some detail here.

It is useful to point out here it was intended that the Department for Work and Pensions (DWP) (the wider DWP, not the Commercial Directorate) would appoint an overall project manager who would provide secretariat support to the pilot project managers in the implementation of the Procurement pilots in the departments. The secretariat would, in practice, provide a forum for the dissemination of good practice for the departmental pilot project managers, and thus ensure a consistent approach to project deliverables and outcomes. The policy deliverables for the Procurement pilots overall were:

- procurement policies and practices that promote equality whilst delivering value for money;
- enhanced and emphasised conditions relating to race equality for use in new contracts, in order to increase the diversity of suppliers’ workforces;
- a package of compliance measures that will enable suppliers to understand what is expected of them, and departments to measure their performance;
- methodology for monitoring compliance with the enhanced conditions that would provide contract management staff with greater levels of confidence that suppliers are meeting these conditions, but without causing an undue burden;
- enhance the workplace practices and procedures in relation to equality within strategic suppliers as well as their supply chain.

Discussions with departmental pilot project managers found no evidence that the intended secretariat support was initiated as planned. It is, therefore, perhaps not surprising that there was considerable variation in how the Procurement pilots were developed and implemented within the individual pilot departments.
It was clear that delivering the policy and desired outcomes of the Procurement pilots would involve a range of expertise and skills within the pilot departments, including equality and diversity specialists, as well as those experienced in procurement. In terms of implementation more generally, this chapter covers the following areas, separately in each department:

- selection of the pilot project;
- key personnel involved in implementation, including staffing levels;
- design and specification of the race equality requirements in new contracts;
- level of support for the pilot, in particular high level leadership;
- barriers and difficulties in implementation.

It is to the implementation history and process involved in the pilot departments that we now turn our attention.

4.1 Department for Work and Pensions

There are two main strands to the pilot initiative at DWP:

- A revised set of standard terms and conditions in all new Commercial Employment Provision (Welfare to Work) contracts from July 2006, requiring successful suppliers to produce:
  - an equality plan;
  - an harassment plan;
  - a diversity training plan;
  - a supplier diversity plan.
- Monitoring information showing the number of staff who are:
  - from an ethnic minority group;
  - female;
  - disabled.

It was expected that these strands would form the basis for the development of new equality and diversity conditions that would be included in contracts between DWP and its suppliers and providers.

The contract area selected for the pilot at the DWP is the procurement of training through the New Deal programme that is managed by Jobcentre Plus. Each Jobcentre Plus district has a provider who is responsible for delivering training to jobseekers referred to them by New Deal advisers. These prime contractors will then subcontract provision to other providers. The new equality and diversity requirements have been incorporated as part of the terms and conditions in the contracts to provide training and development for Jobcentre Plus clients on the
New Deal programmes which were re-let from July 2006. As a result, the evaluation covers several years of implementation.

There are three issues which are important as providing the wider context for the implementation of the pilot: First, procurement of goods and services at DWP is much more centralised, and is carried out by the department’s Commercial Directorate. This includes procurement of commercial employment provision, such as New Deal and other types of customer-facing programmes. Secondly, there have been considerable changes in procurement strategy at DWP over the last five years. In particular, there has been a fundamental change in commissioning strategy, with the department looking to reduce the number of contracts it lets. Increasingly, DWP is seeking to consolidate its range of suppliers and is opting for contracts that are larger and, therefore, attract larger providers. But, at the same time, the department is seeking to ensure it captures, the expertise of the smaller, often more specialist providers, including specialists who deal with ethnic minorities and other disadvantaged groups, and include them in the delivery of provision as subcontractors or partners to the prime contractors. This means that where it is looking to develop and bring new policy programmes to market, DWP now looks at how it would attract or involve a range of large and small providers and use their expertise to benefit the department’s diverse customer groups.

The move towards consolidation of suppliers has also led to the restructuring of how the contracts for commercial employment provisions are managed. There has been a fundamental change from what used to be an organisational procurement structure, whereby contracts were managed on a regional basis, with centres in Sheffield, Scotland, Cardiff and London. The new structure has introduced a more strategic structure. The top 30 providers of DWP Commercial Employment Provision programmes, no matter where they are in the country, are now managed by a Supplier Relationship Management (SRM) team, and the rest are managed by local procurement management (LPM) teams.

The third important development that has had an impact on the implementation of the Procurement pilot at DWP is the recent establishment of a new directorate to oversee the delivery of policy at the department. The Delivery Directorate has been in existence for about two years, and was established to bring together in one place all activities connected with the department’s contracted-out employment programmes, which previously had been dispersed around local Jobcentre Plus districts. There are two broad facets to the work of the Delivery Directorate: First, it works alongside policy teams as new programmes are being developed, either as mainstream or pilots, and turn those into implementation projects and sees them through to the point where they are put under contracts by the Commercial Directorate. Once those contracts are drawn and the associated programmes are live and running, the Delivery Directorate is accountable for the maintenance and delivery of the policy intent; and for ensuring that they are delivering the performance that they are intended to. The Delivery Directorate, which is currently located within the Employment Group at DWP, has further responsibility for
ensuring compliance with overall Government policy on issues such as equality and diversity.

These three strategic developments have influenced implementation of the Procurement pilot at DWP, and have implications for its overall assessment.

4.1.1 Development and design of equality and diversity requirement

Of the three pilot departments, the implementation of the pilot at DWP has appeared most systematic, with key players engaging with each other at various stages of the process. In particular, the procurement sourcing team that has been allocated procurement of the welfare-to-work programme has a close working relationship with its delivery colleagues in the Work, Welfare and Equality Group (WWEG). This ensures that in developing the policy and the provision requirements, WWEG officials are able to take into account their thinking about the actual policy intent, but also the commercial aspects of policy, and how it would be purchased and managed. For the pilot, the procurement sourcing team first looked at some of the work that the Greater London Authority (GLA) had done in incorporating diversity requirements in its procurement activities. There was a good deal of liaison between the two organisations to see how DWP could incorporate equality and diversity terms and conditions into its own contracts. At the same time, the policy (WWEG) team established a project team that would co-ordinate all the stakeholders with an interest in the particular policy. It is this stakeholder group that took responsibility for developing all the facets of the policy requirement. For the pilot, the role of the project team appears to have been critical.

’I think with the big national programmes that have been developed, and there’s quite a large number of them at the moment, the thing that holds it together and drives it all is the establishment of a project team. And we had project specialists brought together who drove the process to make sure that relevant stakeholders were involved, that if they had things to do and develop and action plans, that they met those deadlines to provide the information required, to meet the timetable that had been set out. You know, you start from, “when do you want this provision delivered from” and you work backwards to “well, the procurement timetable requires this, the providers need this time to write the bids, we need the volumes and the specifications signed-off”, and you work it backwards. So the project team in WWEG, in my experience, were very professional, very well-structured and organised to pull it all together.’

(Senior Procurement Team, DWP)

Since the pilot was established, DWP has included compliance with the equality and diversity requirements as part of an initial preferred supplier accreditation process for all potential providers for contracts valued over £50,000. The accreditation assesses their compliance with health and safety legislation, and with equality legislation, and is carried out by an external organisation, which currently has a contract to provide DWP with an accreditation service. For the pilot, this
intermediate supplier is expected to approve suppliers on the basis of detailed analysis of suppliers’ responses to questions about their equality and diversity policies and practices. The implementation of the pilot has, therefore, been built on a pre-existing relationship between DWP and this intermediate supplier, which has established systems to streamline information on procurement at a national level. The contract with the intermediate supplier has led to the establishment of a consistent evaluation database, which procurement managers are able to access.

The development and design of the equality and diversity requirements in new contracts were carried out through an iterative process between an external specialist subcontractor to the intermediate supplier and DWP project managers. The requirement itself seeks evidence of how the principles of equality and diversity are applied by suppliers to their workforce, and less about whether or not they have a policy. In other words, the assessment is based not only on the policies suppliers claim they have, but how those policies meet the equality and diversity requirement; by giving examples of what they are doing to satisfy the general and specific equality and diversity duties.

The requirement is introduced to suppliers at the pre-contract stage for new suppliers, after they have gone through the stage of being selected as a preferred bidder. In this case, while the pre-contract negotiations are going on with DWP, the supplier would be referred to the intermediate supplier and has to supply the required information via online forms and supported documentation. Specialist assessors look at the information supplied against pre-set criteria to see if there are gaps and try to elicit further information.

Since the pilot was implemented, compliance with the new requirements has additionally been applied retrospectively to providers with contracts that were awarded before May 2006. Any provider who already had equality policies in place was required to submit these at the earliest opportunity. Those providers without equality and diversity policies in place were expected to work to develop them, but in practice they were given time to develop their equality and diversity policies.

The assessment of their compliance with the diversity and equality requirements in the accreditation process is not intended to be punitive, by excluding potential suppliers. On the contrary, it is not the intention of DWP that any supplier fails the process. Rather, it is expected to help suppliers improve their standards.

‘It’s not our intention that anyone fails the accreditation process, and to my knowledge, we’ve not had a situation where a provider has been refused a contract due to the accreditation process. What we want to do, in relation to accreditation, is to get providers up to the standard we require them to be.’

(Procurement Project Manager, DWP)

DWP has provided guidance on the equality and diversity policies that suppliers are expected to have in place. The agreed equality plan is expected to include:
• a comprehensive statement covering race, gender, disability, age, faith/belief and sexual orientation;

• details of recruitment policies and procedures which adopt non-discriminatory practices, and includes confirmation that publicity for vacancies will encourage applicants equally and fairly from all groups;

• the provider’s equality and diversity objective, and how these will be achieved;

• the steps that will be taken to ensure that their subcontractors implement a similar policy to their own;

• the methods by which it is proposed to monitor and report on the implementation of the policy and its effectiveness.

The equality and diversity requirements, which are included in a schedule of the terms and conditions which form part of the tender documents package, are in Appendix D.

4.2 Department for Children, Schools and Families

There are three strands to the pilot initiative at the Department for Children, Schools and Families (DCSF):

• strengthened advice and support to procurers on incorporating race equality into procurement;

• including equality requirements in the contract with consultants to set up Children’s Centres;

• including race equality terms and conditions in the Photographer’s Framework (call-off contracts for agency photographers).

In order to better appreciate implementation of the Procurement pilot at DCSF, it is important to understand that unlike most other Government departments, procurement in DCSF is not centralised, but devolved down into the department to [about 140] policy teams, with varying degrees of autonomy. In practice, this means that procurement is undertaken by policy staff who are specialists in their own fields of expertise, e.g. experts in educational attainment, etc. The policy teams are, in turn, supported by procurement specialists from a central Commercial Policy Team, that is based in the Commercial Directorate. The Commercial Policy Team provides procurement, legal and commercial business advice to the contract managers and purchasers in the department. The devolvement of procurement in this way means that the pilot was not located within the Commercial Directorate, but within the Children’s and Young People’s Directorate. Devolved responsibility means further that the Commercial Policy Team provides a discretionary service, and may not get to know about all procurements within the department; only about the ones which are high risk, or ones where those dealing with them are having problems. However, a Strategic Procurement Project Team (SPPT) provides a
conduit between the procurement specialists and policy teams, so they are aware of what projects are running within the department.

The contract areas selected for the pilot at DCSF were the provision of Children’s Centres and the provision of photographic services. For this evaluation, information was only available for the Children’s Centres initiative. The selection of this pilot project appears to have been influenced by the need to work to a tight deadline, and the ease of meeting that deadline. The Commercial Policy Team was asked by ministers and senior managers to identify a project that would be suitable for the pilot. The commercial policy team, in turn, asked for project managers in the department to volunteer, but had no response. The team, consequently used their links with the SPPT to identify a project at an early enough stage to accommodate introduction of the equality and diversity requirement in the design of the tender specification. The Children’s Centres initiative was chosen as the principal pilot project because it was at the right time, but also because it was an initiative that was dealing with the public in general. Perhaps more importantly, the policy teams responsible for implementing the initiative were willing to help take the project forward, although on condition that the Commercial Policy Team would provide them with more support than would normally be provided to policy teams in general.

Once the Children’s Centres initiative was selected for the pilot, it was incumbent on the Commercial Procurement Team to take the procurement forward in a way that they felt was lawful and within the legal environment of EU procurement directives and other UK Regulations and Treaties. The procurement route used in the tender process was considered likely to provide opportunity for the inclusion of the equality requirement. The project qualified as an Official Journal of the European Union (OJEU) procurement, i.e. it was subject to full requirements of EU regulations on fair competition. OJEU procurement can be carried out as either open procurement, a restrictive procurement, or a competitive dialogue. Under competitive dialogue, the procurer negotiates with the potential suppliers at the pre-contract stage, before a contract is awarded.

The tender for the Children’s Centres was through competitive dialogue, which comprised a number of stages. As an OJEU procurement, the project was first advertised in the OJEU. Potential suppliers who had expressed an interest in the project were then required to complete a pre-qualification questionnaire (PQQ) stage, at which the potential suppliers were short-listed. The next stage in the process involved negotiations with the short-listed organisations, to arrive at what was a ‘best and final offer’; where the negotiations had been completed, and potential suppliers had clarified what they were going to do in the tender, for example, what activities they would deliver, and at what cost. The project specification (Invitation to Tender or ITT) was then drawn up, based on the results of the dialogues, and went out to tender between the relevant short-listed suppliers. The returned tenders were then evaluated and the contract awarded.
As part of the development of the pilot, the Commercial Policy Team briefed the SPPT that was carrying out the competitive dialogue, to include the proposed equality and diversity requirement into the negotiations; with the aim to create a specification to run Children’s Centres and appoint a contractor to manage the process with local authorities. The requirement was introduced during the second or third stage of the dialogue with potential suppliers, ie at the pre-specification stage, and before the ITT was issued. The dialogue ran from January 2006 to October 2007. A four-year contract was subsequently awarded to a consortium of consultants who would ensure that the local authority contracts were set up correctly. Diversity requirements were included in the contract, with the consortium required to ensure that the children’s services delivered would meet the needs of the diverse community.

The precise terms and conditions which incorporate the equality and diversity requirements for the pilot are as follows:

- ‘The Contractor shall help Local Authorities to build their capacity to plan and deliver Children’s Centre services that meet the needs of all children and promote racial equality.

- The Contractor shall use recruitment and selection processes that embrace and exemplify equality and diversity principles. Selection shall be based on clear criteria that encompass high level professional and personal competences.’

The development of the pilot must be seen in the wider context of how DCSF has moved to introduce equality issues in general procurement. The department has adapted a framework developed from research commissioned by the Ethnic Minority Employment Task Force (EMETF)\(^4\) to produce a Framework of Practical Guidance for use by the policy teams that have responsibility to procure services. The guidance includes, among other things, contract clauses that procurement managers could include in the terms and conditions of tender specifications, and has been published on the DCSF Intranet. The Framework of Practical Guidance is Appendix E.

4.2.1 Implementation issues

Discussions with staff involved in the pilot raised a number of issues that have implications for implementation of the Procurement pilot at DCSF: First, selection of the pilot project itself appeared to be less strategic than might have been envisaged. The principal reason appears to be absence of formal direction from senior departmental officials. The problem here was that there was not a direct meeting between DWP and DCSF ministers to discuss the idea of Procurement pilots in the first place. Instead, DWP ministers met directly with DCSF officials.

'The DWP ministers met directly with us which was quite uncomfortable, and there never was the kind of clarity that would normally happen where DWP ministers meet the DCSF ministers, and there’s a clear steer down and there’s an understanding that when ministers in the DCSF say “we want this to happen” and we say “well that’s fine but then this and this and this will be the impact” and they say “yes we agree” – there was never the kind of clean engagement that would normally happen… and it was just a little bit untidy.’

(Senior Procurement Official, DCSF)

Second, selection of the pilot project itself raises an issue about delivery of the requirement at DCSF. The department is not the delivery body for the Children’s Centres initiative. The initiative is part of the wider Every Child Matters programme, which is a cross-government programme, with DCSF as the lead department setting the policy direction. The initiative is expected to be delivered by 150 local authorities that are actually responsible for the provision of Children’s Centres in their areas. In between the DCSF and local authorities is a delivery agent, that is expected to support the local authorities and challenge them to make sure that by 2010 they have their centres up and running, and that they have high quality provision, offering services that are relevant to the local community. The delivery agent acts a host organisation, and has set up a partnership of public sector and charitable organisations to form a branded entity, known as Together for Children. So whilst the delivery agent takes what would be viewed as the financial risk and is the signatory of the contract with DCSF, the oversight and delivery of the Together for Children is the partnership. In terms of delivering the children’s services in practice, it is the local authority partners that have been given the funding by DCSF to deliver the 3,500 Sure Start Children’s Centres by 2010. For the Procurement pilot at DCSF, there is clearly a question about where responsibility lies with regard to ensuring supplier compliance.

As was noted earlier, the Children’s Centre project is located within the Children’s and Young People’s Directorate. But we found no evidence that the policy team responsible for the initiative were aware they were involved in a pilot. In particular, there appears to have been little communication between procurement specialists who designed the equality and diversity requirement and the policy team that is managing the pilot. In this regard, the links between the key players involved in the implementation of the pilot at DCSF appears to be fairly tenuous.

‘My dealings with procurement have been on… we get general advice from procurement on how we should effectively manage contracts. We renewed the contract recently, so I had advice from procurement about the renewal. Every time we vary the contract, we say, ‘this is what we’re going to do, can you advise?’ Now, to be honest with you, I’ve had no contact with anyone about this pilot, and as I’ve said before, I didn’t know we were in a pilot until you called, so there’s an issue around that. So, I don’t know whether I should have had, whether there is someone in procurement who is aware of this?’
’I’ve also had no contact from equality and diversity people... Whenever I’ve spoken to a procurement person, it’s been because of something specific I need to talk to them about. When I took on responsibilities for the contract, no one said, “you need to understand this is part of a pilot”.

(Project Manager, DCSF)

The pilot project selected, taken together with the devolution of procurement, raised a further issue about how the requirement could be measured or assessed. Procurement specialists expressed concern that the Children’s Centres themselves were a new policy, with no past history, and there was no knowledge or expertise within the department as to benchmarks against which to measure the discrimination requirements within the terms and conditions included in the contract. This is particularly so as the equality and diversity requirement itself appears to be couched in very general terms. Perhaps not surprisingly in these circumstances, procurement specialists have found it difficult to take the pilot much further forward.

‘As a discretionary service it’s not really for me to say – I suppose what I’m saying is if procurement was centralised, if we had control over everything then I imagine there were other procurements we would have run that would have been over a shorter time period or potentially with a subject matter that admitted more to addressing ethnic minority employment promotion in a legally sound way, but because we are a discretionary service where we’re only pulled in when people ask us to... I can’t say I think that that contract there would have been better. I, just in the abstract, I think there would have been ones where we would have either had better circumstances in terms of the legal perspective. Was it deliverable in terms of timescale?’

(Procurement Team Leader, DCSF)

Lastly, the limited relationship between policy and procurement teams highlighted the barriers that had to be overcome before the pilot could commence. For procurement specialists, the pilot raised some concerns about including equality requirements in procurement, as it was felt that policy teams would be resistant to these. In the devolved system, the procurement policy officials who were tasked with first, identifying a project, then developing and implementing the pilot, needed to bring on board their colleagues in the policy teams, and this took longer than it was hoped. The apparent log-jam was broken by senior management, at Director General level, who at the time was the champion on ethnicity equality, and who pledged that if agreement was not reached quickly on the department’s participation in the pilot, then all future procurement would be done in the way that the EMETF had recommended. This appeared to have produced a meeting of minds between the procurement policy team, policy teams in the Children’s and Young People’s Directorate, and the department’s Equality and Diversity Unit (EDU), before the Children’s Centres were suggested as the subject of the pilot. It was also notable that this ended the EDU’s involvement in the pilot.
4.3 Identity and Passport Service

The pilot at the Identity and Passport Service (IPS) aimed at:

- working with existing providers to improve their policies and performance on race equality;
- incorporating strengthened race equality conditions in new contracts.

The contract area selected for the pilot at the IPS was for the provision of learning and development (L&D) for the HR department’s Learning and Development Unit. This involves equal opportunities leadership training for executive officers in the department (HEOs, SEOs and Directors). The reason for selecting the particular (contract) area to be included in the pilot appears to have been based on three particular considerations: the ease of finding an existing contract area where the race equality and diversity requirement could be applied; the extent to which appropriate support could be provided to the procurement specialists charged with implementation of the initiative; and the need to locate the new initiative with existing legal requirements. In particular, it was important that the selected project could be easily evaluated by procurement staff as part of overall tendering process.

‘Again, I go back to the legal bits and pieces; we can actually include social things and lots of other things legally, but it’s even before that. We could always do it. But I needed something that the procurement people could actually take to be evaluated.

And that’s why I went to a couple of meetings before the pilot really took off and that’s what I thought was the consensus. We needed something that the procurement people could work with, because we couldn’t actually read a 57-page document and know whether that passed; was it a good pass, was it a fail? What I needed was almost a score sheet. “They got five – they passed. They got four – they didn’t pass.” And, again, we’re happy to include anything in our procurement evaluations, but it has to stand up in a court of law.’

(Procurement specialist, IPS)

The questionnaire at IPS started with the development of a PQQ. The main purpose of the questionnaire was to gather some basic information and other details about the suppliers, which would assist the procurement staff in deciding which suppliers to short-list to invite to tender for the project. The questionnaire, which was developed with input from HR specialists at IPS with responsibility for equality and diversity, is in Appendix A.

IPS sent a questionnaire to around 20 recruitment agencies supplying temporary staff to the department to ask a series of questions on compliance with, and action to promote, diversity. A template for assessing these was also drafted, and it was intended that the responses would be assessed against this. Given the concern to take considerations in procurement into account, the template
sought to balance essential legal requirements which every supplier would be expected to comply with, and good practice which would then be scored. Once this had been assessed, IPS would identify any weak suppliers and seek to work with them through contract management to enable them to improve their policies and performance.

However, the initial draft of the questionnaire was found to be too complex to put in a straightforward matrix which would yield the information upon which the decision on suppliers could be made. Additionally, no appropriate framework had been developed to enable objective evaluation of the information that would be collected from suppliers. There was a potential risk that without such a framework, the collection of information would become just a box-ticking exercise.

‘That’s what evaluation is in lots of different areas and adding another one, two, three should only add minutes to it. And then, like all these things, you are relying on what the supplier tells you. “Have you got a diversity policy? Yeah, okay, show it to me.” [Then] “What do I do?” “Is that good or bad?” I’ll probably know a really bad one. But again, companies – large, medium and small – have to have it [diversity policy] now because it ticks their box. So they’ve all got it; it doesn’t mean they’re any good or better or anything. But it’s no good just having it. Something’s got to happen. So, in a sense, the questionnaire’s got to try and capture some of those dimensions as far as possible.’

(Procurement specialist, IPS)

Following consultation with the Procurement pilot secretariat and internal legal advice on their application, the questionnaire was revised into a much simpler one that could be administered to suppliers. The revised questionnaire in Appendix ?, has been incorporated in the terms and conditions included in the pilot department’s tender document. Thus, what was in essence the department’s standard pre-contract tender document, has been modified to suit the requirement with the inclusion of a section which deals with equality and diversity. The modified tender document can be found in Appendix B.

The equality and diversity requirements from the pilot are summarised briefly below.

**Equality policy:** The supplier would be expected to comply with the agreed Equality Policy. This requires suppliers to:

- have equal opportunities policy in relation to race and ethnicity, gender, disability, age, sexual orientation and religion or belief;

- carry out diversity monitoring of the workforce;

- have provision in place to train their staff on equal opportunities issues.

**Monitoring and reporting:** The supplier would be expected to provide IPS, from the date of the contract and subsequently every 12 months (if applicable), information on the proportion of its employees who are:
• female;
• from an ethnic minority group;
• disabled.

4.3.1 Implementation issues

At the time of this report, the requirement had not been formally introduced, and the Procurement pilot has not yet been implemented at IPS. Discussions with staff involved with the pilot so far highlighted a number of issues that have hindered its implementation at IPS.

The first relates to the appropriateness of the specific project selected for the pilot. As was noted earlier, one of the main reasons for selecting the particular project for the pilot appears to have been the ease of finding an existing contract area where the race equality and diversity requirement could be applied. In this instance the selected pilot project was also located in the area where the procurement specialist [manager] had volunteered to take on the responsibility as pilot project manager. It became clear from the onset, though, that the pilot project manager would need considerable support from HR diversity specialists who could help with developing and designing not only the new specification, but also a framework that would simplify the evaluation process; with clear objectives and outcomes from the information that was intended to be collected from suppliers. A senior official highlighted the dilemma the department has faced, by pointing out that whilst the Procurement pilot team did not have the necessary expertise in equality and diversity issues, the HR department could also not afford to provide the experts who could review the outputs and essentially score them, because of their own workload. The official believed the procurement team needed a process that was simple and easy, in terms of the skills required to undertake that process.

‘But again, we are humble procurement people, happy to do things; but it has to be simple... So whether it's diversity or sustainability or any other thing, we have to have the experts... They can’t bring a document and say, “well this company is better than that company because that's what they are doing”.’

(Procurement specialist, IPS)

The dilemma, therefore, is that procurement staff lack diversity skills which would actually help them sell the initiative to suppliers and help deliver the pilot.

‘I don’t think that that support is out there. I don’t think that there’s a team of people supporting procurement to actually deliver this. Like saying, “these are the rules, this is the policy”, that doesn’t actually help me deliver it because I’m not a diversity [expert]... I need something more. Make it easy. Give me something that does it, and then I’ll go and sell it to my suppliers.’

(Senior Manager, IPS)
5 Current practice from the pilots

5.1 Introduction

This chapter looks at the procedures and processes that departments have put in place for effective management of the pilots, following their implementation. The assessment of current practice is considered from the perspectives of the pilot departments and suppliers. As was noted in Chapter 4, the pilot at the Identity and Passport Service (IPS) has not been fully implemented and, therefore, provided no information about current practice. Because of the nature of the structure of the Procurement pilot at the Department for Children, Schools and Families (DCSF) the evaluation also produced very limited and partial information about day-to-day practice. Consequently, the analysis here is drawn largely from practice at the Department for Work and Pensions (DWP).

For the pilot departments, discussions with staff explored a number of cross-cutting issues, including:

- the level of awareness of the pilot in the first place;
- the level of support and resources dedicated to the pilots;
- capacity issues, in particular the extent to which contract managers are able and willing to support providers in developing the capacity to meet additional requirements;
- countervailing pressures, in particular time pressures and the day-to-day imperative for policy delivery;
- legal issues, in particular a residual concern that the scope of the pilots may potentially extend beyond the limits of what is legally permissible.

For suppliers too, it was important to:

- establish the level of awareness of the requirements;
• consider how significant were the proposals to revise terms and conditions in their contracts which required them to take action to promote race equality in service delivery;

• assess the burden on their business, in terms of ease or difficulties in meeting the requirements.

5.2 Practice in pilot departments

The introduction of a new policy measure relating to procurement creates a need for collaboration between policy and procurement officials. Procurers must be able to assess the impact of the measure on how they manage the contracts affected by the policy measure; in particular, how the measure would be fed into the contract management framework, and how procurement teams would then manage the live running and delivery of the particular measure. For the Procurement pilots, this implies looking at how they make sure suppliers are adhering to the spirit and requirements of that policy. There was evidence from the interviews with senior procurement staff at DWP, for example, that procurement team leaders with a cross-cutting role were involved in the early discussions to assess the impact of the pilot against the contract management framework, and had further responsibility for disseminating that to contract managers.

Interviews with pilot department staff highlighted varying levels of awareness of the Procurement pilots among staff who might be expected to have responsibility for different aspects of their implementation. Apart from the pilot project managers themselves, awareness of the pilots was highest among senior policy and procurement staff, who had been involved at some stage in the development and implementation of the pilots.

‘When you set the contract up, there are a number of areas that we look at. That’s not just around ensuring what they bid to do, around delivery and premises, staff and level of staffing, we do look at that. But also, there are a number of statutory requirements as we now call them within the contract, and that number is growing, actually of things we look at. So, we’ve started to look at their financial footing, their viability, how they’re going to structure themselves with the supply chain, who those people are within that supply chain and how they will operate, where the lines of responsibility are. We also look at their structure for payment and other stuff, and one of the things is Schedule 8, equality and diversity, and through using other mechanisms, like [intermediate supplier]…thus ensuring that we do have insight into how they’re proposed to operate and what structures they’re going to have in place.’

(Supplier Relationship Manager, DWP)

However, there did not appear to be as much collaboration or sharing of information between the pilot project managers and the majority of pilot staff about the intent of the new equality and diversity requirements that had been introduced in new
contracts. Indeed, some contract managers did not appear to have been informed of the existence of the pilot at DWP. Consequently, there was not only very limited awareness, but also little understanding of the aims and objectives of the pilots among contract managers, as illustrated by the responses of some of the contract managers interviewed at DWP.

‘I had no idea it was a pilot, I thought it was a new… I mean since Schedule 8 [the equality and diversity requirements] has come in, I assumed it was a more stringent checking, if you like, that providers were complying with the diversity and equality policies. I thought it was an additional check that the suppliers we use are fully embracing all the regulations.’

(Contract Manager, DWP)

‘I could be honest and say that I just thought it was part of the standard business practice. I didn’t think of it as a pilot. It was built into the system when I arrived and basically we’ve been doing it. So, no I hadn’t thought it was a pilot.’

(Contract Manager, DWP)

Notwithstanding their limited awareness that the equality and diversity requirements included in Schedule 8 of the new contracts were being piloted, all the contract managers interviewed said they expected the suppliers of the contracts they were managing to be fully aware of the new requirements, as a result of completing the accreditation process successfully. But it was also clear that contract managers did not feel they had responsibility to draw particular attention to the equality and diversity requirements.

‘We don’t issue the terms and conditions and say “you be aware of Schedule 8 that’s included within it”. We do bring the terms and conditions to their attention, but again it’s in general terms; it’s more a description of the service that they would require, where they would require it, the volumes, the timetable for the exercise etc. It’s the nuts and bolts of the procurement exercise as opposed to definitive documents.’

(Contract Manager, Local Procurement Management (LPM) team)

As we will see in Chapter 6 contract managers have formal responsibility for monitoring suppliers’ compliance with the equality and diversity requirements but this is not always consistently applied in practice. Evidence from the interviews indicated that it is possible for suppliers to be awarded a conditional pass from the accreditation process, where they do not meet all the conditions included in the new requirements. It is perhaps paradoxical that in such cases, this would be brought to the attention of the contract managers, who would then be expected to put an action plan in place to help and support suppliers having difficulty in meeting the new requirements to address their shortcomings. It could the argued that the extent to which contract managers are able to provide the appropriate support that suppliers need would depend on their knowledge and skills in equality and diversity issues.
It was clear from the interviews that skills and experience on equality and diversity issues varied considerably among contract managers. There was evidence that some contract managers found it difficult to deal with equality and diversity questions themselves, and felt ill-equipped to help suppliers who had been identified as not meeting all the requirements. The DWP intermediate consultant felt a little discussion between the contract manager and the supplier was sometimes all that was required to make a difference. Indeed, a contract manager acknowledged as much, saying:

‘It [the pilot] has an impact in terms of time and also in terms of the knowledge required to fully appreciate the intricacies of the various strands of the requirements.’

(Contract Manager, LPM)

Other evidence from the interviews suggested there are a number of reasons for the lack of equality and diversity skills among contract managers. Senior managers and contract managers alike attributed this partly to time and resource constraints.

‘I’m sure we could do better on things, but resource constraints and the amount of work we’ve got on and just a whole variety of issues; we do what we can, basically. We have to balance a whole range of different requirements and desires and what have you to get through, so, as I say, we do our best but I’m sure we could do better.’

(Supplier Relationship Manager, DWP)

‘Again, we’ve got to take into consideration the time factor that we have, the number of contracts that we have, that sort of thing. I think this takes an awful lot of time, because obviously if we were to start going into every single schedule there, then it’s going to be a massive increase in time spent actually managing a contract, in my opinion.’

(Contract Manager, DWP)

But there was other evidence that some contract managers do have the necessary skills, to enable them to help and support suppliers who are experiencing difficulties meeting the requirements.

‘I think contract managers, in general, will listen to anything that our suppliers are saying may cause difficulties in delivering the contract, and if they highlight something that comes in Schedule 8, then I’m quite sure that we will sit down and talk to them about it and give them the benefit of whatever knowledge we have on the issues that they’ve raised.’

(Contract Manager, LPM)

Contract managers expressed some concern about the extent of support that they could legitimately give to suppliers in particular circumstances to help them meet the equality and diversity requirements, not least because of the need not to be seen to interfere with supplier competition.
'Well, I wouldn’t give them as much help as other organisations would give them enough help to get them through a process. If there was other competition there, we wouldn’t do it. We have to be very, very careful about this. We can go out and say, “we’re going to help you”. And if there’s other competition they’ll say, “well, why did you help them to get the contract, and we didn’t get any help”, just because we knew what we had to do.’

(Contract Manager, LPM)

‘In addition to that though, we wouldn’t tell them, especially like in their policies, what we are wanting them to write, just to put it down for the sake of putting it down. We expect them to have demonstrated that that’s what we do. We give them a steer to the content of what we’re looking for, under a range of headings.’

(Contract Manager, LPM)

The evidence from the interviews also showed there are no formal procedures in place to enable contract managers to provide support to suppliers on a systematic basis. At best, contract managers may rely on general guidance that is linked to a performance improvement plan, to which contract managers may refer when there is supplier performance failure in the outcomes they are contracted to deliver. One contract manager pointed out the dilemma posed by the absence of a formal procedure:

‘As the contract manager, I haven’t got packages of things that I could just hand to the provider and say, “there you go, if you happen to look through, this is what you do.” I would have to look at it with the provider in terms of what issues they were facing, what they’d done so far.’

(Contract Manager, LPM)

For specialist procurers, the debate around the issue of delivering the subject of their contracts without distraction has still to be resolved. Evidence from the interviews with pilot staff suggests there is a tension among senior officials, between those who see procurement as needing to be standardised, and others who see a need to pay attention to specific issues, including equality issues or supplier diversity. That debate is encapsulated in the remarks of a senior procurement managers, thus:

‘Our procurement processes are fair and open so we couldn’t, for instance, award a contract on the basis that we wanted to improve the racial diversity of our supplier base. We would probably be in court within a week. We just couldn’t do it. We have to award on the most economically advantageous tender, unless colleagues say we are allowed legally to take such steps, and the department wishes to take such steps, I don’t do that.’

(Senior Procurement Manager, DWP)

At the heart of the debate are concerns about the scope of the pilots extending beyond the limits of what may be legally enforceable by procurers in their dealings
with their suppliers, as was discussed in Chapter 3. Again, the views expressed by a senior procurement manager are instructive.

‘I don’t think anybody has any problems with the principle, but in terms of the practice it’s really, really difficult. We can do what we can in terms of getting assurance about those things but I would protest most strongly if we were told, “well, you’ve got to go in and check that Jo Blogs provider has got an ethnic minority makeup of x, y, z and to make sure they’ve got that”. How could we do that? When we put a contract in place we’re asking them to deliver something and they, as an organisation, take on the responsibility for delivering to us that contract, and if we go too far into telling them how they ought to do it then we take on vicarious responsibility for that, so there are real legal issues in terms of how far we go.’

(Supplier Relationship Manager, DWP)

5.3 Practice among suppliers

The suppliers included in this evaluation were selected from lists provided by contract managers at DWP and DCSF. In terms of identifying those to be interviewed, it was recognised from the onset that there were likely to be gaps between commercial staff who respond to tenders, and those responsible for employment issues, such as HR staff, who would know about equal opportunity policy and practice. Through initial enquiries with the named contacts in the organisations, it was possible to identify in each case the appropriate person who could provide a wider perspective of the organisations’ processes and practice. Face-to-face interviews were then conducted with the appropriate respondents in the supplier organisations.

The interviews explored the nature of the suppliers’ business and markets, and discussed how easy they found it to comply with the new requirement; in particular: how they found out about them; whether they understood what was required of them, and whether they seemed reasonable; how onerous they found the requirements and whether they were burdensome; and whether they needed or received any support to help them meet the requirements.

5.3.1 Background to suppliers

The supplier organisations were drawn from across England, Scotland and Wales. With regard to their geographical coverage, they ranged from large organisations with offices across the country; medium-sized organisations that are regionally-based; and small organisations providing specialist services at local level.

Their geographical coverage also tended to reflect the size of the organisations, in terms of the number of employees they had. Again, they ranged in size between the largest organisations with over 3,000 employees nationwide, and those employing fewer than ten people. The representation of ethnic minorities within the workforce of suppliers also varied widely, and was determined mainly
by the demographic makeup of the area, either regionally or locally. In terms of proportions, these ranged from around half (50 per cent) in the case of a large supplier that operated nationally, to local organisations with no ethnic minority employees. But there were also small to medium local organisations where ethnic minorities formed a majority of the employees.

Supplier organisations provided two main types of service: DCSF suppliers were providing a range of integrated children’s services at Children’s Centres. These included nursery education, affordable childcare, family support and family learning programmes, parenting programmes, health and paediatric outreach services. DWP suppliers were providing a range of employment services, including learning and training as well as other employability programmes, aimed at helping people find or get back into work. All the activities included in the services were being delivered under the welfare to work initiatives included in the New Deal programme.

All the supplier organisations provided services on behalf of key public sector clients; national government departments, the two nation governments – Welsh Assembly Government (WAG) and Scottish Government, the Learning and Skills Council in England, and equivalents Skills Development Scotland, and department for Children, Education, Life and Skills (ECELLS) in Wales, as well as local authorities. In almost all cases, the contracts with the key clients represented significantly large proportions of the budgets of the suppliers; ranging from at least 75 per cent for the lowest, to 100 per cent. Very few of the suppliers provided any services to non-public sector organisations in addition to their contracts with the key clients. This means in effect that almost all the incomes of the supplier organisations are generated from the public funding sources. At the time of the interviews, almost all the DWP suppliers were providing services as prime contractors in their own right. Others were prime contractors for most of their contracts, but were also subcontractors to other organisations.

The key customers for DCSF suppliers were parents and their children, whilst for the majority of DWP customers, suppliers were exclusively unemployed jobseekers. As was the case with their own employees, the ethnic composition of the suppliers’ key customers also varied. And although some suppliers’ programmes were aimed at identified client groups, none were targeted specifically at ethnic minority groups.

The principal procurement route for the DWP suppliers was through open, competitive tendering. The suppliers had mixed views about the effect of this type of procurement route. Some voluntary sector suppliers in particular said they found the open tender route both bureaucratic and burdensome, particularly as they lacked external expertise to help them in the tender process. There was some evidence to suggest that some smaller supplier organisations were finding it increasingly difficult to compete for the size of contracts being put forward by DWP. The reorganisation of DWP procurement, with emphasis on a smaller number of large suppliers was described by some suppliers as putting them at a disadvantage. Given their over-reliance on DWP contracts in particular, some smaller organisations were not certain about their future prospects, after their existing contracts expired in 2009.
5.3.2  Awareness of pilots

Chapter 6 describes in greater detail how the equality and diversity requirements were introduced to suppliers. The focus for this section, however, is on the extent to which suppliers were aware of the pilots, and its aims and objectives.

It was clear from discussions with suppliers that they had little or no awareness at all of the Procurement pilots per se. This was true particularly of DCSF suppliers, who did not appear to have been given any information regarding the department’s expectations that they would address the race and equality requirement in their contract. However, almost all these suppliers expected meeting such requirement to be implicit in their work; to be committed to promoting diversity through the delivery in Children’s Centres. The issue for them, in this case, appeared to be more of how best they could incorporate diversity and inclusion within their work. For the prime contractor to the delivery of the Children’s Centres, this was particularly pertinent to the work they did to support local authorities in their delivery.

‘Within our work directly with local authorities, that would be at the senior strategic level. Because if we’re guiding local authorities on impact and practice and delivery and reach, then we take the view that diversity is important. So that is where the challenge comes in, it’s harder than we think: a local authority has, for instance, active participation and take-up in their Children’s Centres, but perhaps 46 per cent looks good, but are they really targeting the immediate community? And the immediate community we could identify may be particularly diverse. And we will guide the local authority, give them some support and help it rethinking what it is that they’re doing. So we are, in a sense, there to challenge and promote good practice as well as to identify where practice is promising, gather cases and material and circulate it [sic] to bring it to the attention of other local authorities.’

(Prime Contractor, DCSF)

There was further evidence that local authorities were, similarly, providing direct support to the Children’s Centres. The pilot requirements were moderated by one local authority, and all the information on their requirement came through embedding these in the centre’s core targets of addressing the needs of children. But the process also highlighted some of the issues that suppliers feel are inherent in implementing an initiative whose aims and objectives can seem quite abstract to the organisations that are expected to comply with its requirements.

‘We’ve got formal research that we might commission through larger companies. Then we do a vast array between ourselves, but a lot of it is local engagement, because that’s how we tend to find out most of our knowledge. We can’t assume things through expectations that might be nationally, we very much focus on things locally and find out exactly what that community needs.’
‘We’ve also brought together lots of information as part of the Joint Area Review [JAR]. Last year the local authority looked at JAR. What we did, we looked very closely at all our performance criteria against the JAR outcomes and looked at gathering evidence; and we’ve developed a portfolio [about] where we see ourselves [in terms of] good practice and shared that across our health colleagues. And within our settings we can remind each other of the practice, good practice we do. So we looked at that within the 5 outcomes, so in terms of achieving positive contribution, economic wellbeing, there are aspects of that where a case study has been gathered to provide evidence to look at, to reflect on and to share.’

(Children’s Centre Manager)

In this case, it was difficult for the Children’s Centre management to balance the aims of the pilot against all the other requirements they needed to meet, although this did not necessarily mean that it adversely affected their practice; just that it was difficult to assess its impact.

There was a mixed response from the DWP suppliers, regarding their awareness of the pilot. At one extreme, a supplier was not aware of the equality and diversity requirements, and heard about it only by chance. The organisation itself did not consider its own equality and diversity policies to be strong; to the extent that the organisation had previously failed an Ofsted inspection on its equal opportunities policy.

‘I’d be honest we didn’t know about that at all. We barely understood that was happening. It so happens that I’ve got a number of friends who still work with Jobcentre Plus who were saying to me this is a really big issue within Jobcentre Plus, it’s an issue in the provider community, and I said “I don’t know what you’re talking about”…which enabled me to recognise it when it sort of came out in some documents. But I cannot help but feel that if I hadn’t actually understood what it was from another direction I would not have grasped this was actually an issue at all. I wouldn’t have grasped it was anything different to what we were doing before, which is not as detailed or as prescriptive and only contains some of the references and it’s very easy in equality of opportunity. This is a lot more sort of taxing.’

(Supplier, DWP)

Overall, though, a majority of the suppliers claimed they were not aware of the pilot, and had not been formally informed about the requirements. They were, nevertheless, aware that they had to provide information about their equal opportunities policies, and about the composition of their workforce, as part of their accreditation. In any case, most of the long-standing suppliers accepted that DWP contracts had always included some enquiry about suppliers’ equality and diversity policies, even if they were not as detailed as the new requirements.
‘I’d have to look back but I think there certainly used to be something in the old contracts that we had, although it wasn’t as detailed as Schedule 8 in terms of what the requirement was. And I think there was probably something in terms of the tender documentation, as well. But it certainly wasn’t as specific as laid out in Schedule 8. But certainly we’ve always had to do things like supply equal opportunity policies and things like that.’

‘The only information that was required was equality policies and the first way that we became aware the report was required wasn’t necessarily as a result of the contract; it was more a result of the accreditation process, in which you were required to go through and identify what you were doing in terms of race, disability. But it was never kept invisible at things like when you win a contract you go to the contract hand-over meeting.’

(Supplier, DWP)

It was also clear from the interviews that the majority of the suppliers had not questioned the introduction of the new requirements, and had accepted it as DWP policy. Their concern, if any at all, was looking at how best to meet the requirement when they were preparing their bids. Given their previous knowledge of DWP, it was perhaps not surprising that all the suppliers had good understanding of the information they were required to provide. However, in a few instances, some private sector suppliers had raised some queries about whether or not the race equality duty applied to them.

‘I can’t remember how many, but there have been maybe a few dozen private sector suppliers who say, “why do we have to do this? We’re not public sector organisations?” And we have to remind them that they inherit the responsibilities by the contract, and initially they do find that a little bit, “Oh, why do we have to do it?” But then they have responded well, subsequently…Specifically the general and specific duties question; they think this is a public sector thing therefore it’s not applicable to us. And that’s just an understanding issue, isn’t it?’

(Intermediate Supplier, DWP)

5.3.3 Ease of meeting requirement

There was little evidence that suppliers had found it difficult to meet the requirement, or had reacted unfavourably to meeting them either. On the contrary, suppliers claimed there are benefits in having such policies in place, particularly when dealing with similar organisations; but also as a means of avoiding working with organisations that did not share their ethos on equality.
‘Because of the services we offer, you also get this cross-fertilisation if you like where if we’re talking to suppliers that may be owned by someone whose a particular strand if you like. You’ve got a much better chance of success with people from that background as clients if we can be seen as open. But I don’t think there are any downsides at all. If we do happen to have any suppliers who have extreme views for example then we don’t really want them because they’re not going to do themselves or us any favours. It could be damaging to our reputation, obviously there’s the tribunal possibility, loss of contracts even, but we’re very clear on that. We have policies covering harassment, equal opportunities, diversity, they go right the way through our organisation from those who are applying for a job to people that work there, people that want promotion, people want to vary their conditions and its absolutely clear on a one pager that these conditions are [named organisation’s] core values, and they apply to employees, subcontractors, visitors, clients, everyone.’

(Supplier, DWP)

Even the few suppliers that claimed they had experienced some difficulty meeting the requirement, believed those difficulties could be eased with the help of a checklist of the information suppliers would be expected to provide for their accreditation.

‘I guess something very simple, just a letter with a checklist, saying these are the things that you’re going to be asked for as part of the accreditation process, and obviously you’ll need to evidence that you have these things in place. And then it would have just been a quick sort of checklist to make sure that we had. And in fact, had I received something like that, we’d have probably started collecting the data even prior to the accreditation process.’

(Supplier, DWP)

To this end, some suppliers believed the pilot departments could do more to support suppliers meet the requirements, through better guidelines. This would ensure there was some consistency throughout the provider network about the quality of information that was required from suppliers. Indeed, DWP was compared unfavourably with the Welsh Assembly Government, with regard to supporting providers to develop good practices. Without effective support, there was a risk that the pilots would only be paying lip-service to ethnic minority employment disadvantage, especially if there was not stringent monitoring in place to check suppliers’ practices.
‘As I think what I was taking the initiative in some areas like health and safety, you know, WAG is far more proactive in terms of supporting providers with development of good health and safety practices than DWP. DWP’s always said “it’s your responsibility”, and I think to an element you could look at the same in terms of equal opportunities and diversity. It’s up to me. You know if I want to have a growth in equal opportunities policy but I know that I’m never going to recruit anybody from the black minority ethnic group or anybody that, you know, doesn’t live in five mile radius that I’ve known for 40 years, then there doesn’t seem to be any kind of rigour in that. As long as I can tick the box that says, you know, “oh yes, I monitor it and I do the rest of it”, really we would feel more comfortable with it if it was driven from DWP sources.’

(Supplier, DWP)

It did not appear that subcontractors were finding it difficult to meet the requirements. The evidence from the interviews suggested that most of the subcontractors were themselves organisations that had statutory and legal duties on equality, and so already met the requirements anyway. Even where some subcontractors faced potential difficulty, they were provided with good support by their prime contractors to help them meet the requirements themselves.

‘We have workshops for suppliers, potential suppliers. We’ve gone out through some of the council of voluntary services. We’ve held open seminars on supplying to us. The [admin] department is very keen on the quality of what we do. Our admin manager did huge amounts of work with those groups. We spent loads of money, time and effort on seminars, training their admin people, getting them to join in seminars with our own staff. We know you’re only as good as that supply chain. If they’re weak, you’re weak. You carry the can for what they do. In terms of Ofsted you also carry the can for what they do so we were very fussy about making sure that we capacity build them.’

(Supplier, DWP)
6 Monitoring the requirement

6.1 Introduction

This chapter looks at the experience of monitoring compliance with the requirement, both at the initial tendering stage and during the life of a contract. As in previous chapters, differences in the way the pilot was implemented across the three departments means that much of the material discussed is drawn from interviews with Department for Work and Pensions (DWP) staff and suppliers.

6.2 DWP experiences

6.2.1 Advising suppliers of the requirement

As discussed earlier, the schedule 8 requirement, covering equality and diversity, is included as part of the standard terms and conditions for organisations tendering to supply employment and training services under the New Deal. However, it is evident from the discussion in Chapter 5 that not all suppliers were fully aware of what they needed to do, and few recalled any particular emphasis on the equality requirement in the earlier stages of the procurement process.

6.2.2 Assessing compliance

Potential suppliers for DWP are required to enter details of their equality policies and practices electronically, along with other information, such as that relating to finances, onto a database provided and maintained by their intermediate supplier, which is responsible for making these initial checks.

Staff involved in monitoring compliance with the requirement emphasised that during this process they were looking for evidence of a real commitment to equality issues, and not simply lip service. They stressed the importance of identifying suppliers who were simply going through the motions by ‘cutting and pasting a policy’ and dealt with this by asking organisations to supply examples of ways
in which they had made practical changes to their services or working practices as a result of their policy. It was, however, recognised that not all suppliers were familiar with meeting specific conditions regarding race equality, and sometimes needed support to understand and comply with what was being expected of them:

‘Where I find people struggle, tend to be the smaller organisations, in virtually 100 per cent white areas, so the rural areas. Because it’s not been an issue, it’s not been a problem; they don’t know why they need to do it.’

(Assessor, Intermediate Supplier, DWP)

In such cases, suppliers had been given advice about the types of evidence being sought, and this was often enough in itself to enable them to meet the requirement:

‘You don’t necessarily need major detail about some of the examples, either. It’s just what they’ve done, in a couple of sentences. There are quite a few of them have commented, “we were doing this; we just didn’t evidence it”.’

(Intermediate Supplier, DWP)

As those monitoring the requirement explained, there was also an emphasis on proportionality, so that the requirements and expectations are tailored as appropriate to the size and capacity of the organisation concerned.

‘I’d make judgements based on whether they were a sole trader, or a big county council employing 20,000 people.’

(Assessor, Intermediate Supplier, DWP)

Staff monitoring the requirement did make reference to some external benchmarking standards, such as the local authority equality framework (http://www.idea.gov.uk/idk/core/page.do?pageId=9491107), where provided by suppliers, but emphasised that they were not a substitute for their own decision-making processes but merely provided an indication of an organisation’s progress in this area:

‘So if they just say to me, “I’ve got level three”, or “I’ve got level four”, I still have to go through the assessment. So I won’t make a judgement based on someone else’s accreditation process, but what it does indicate to me, if they got to level three or level four that they have the monitoring information, they have the policies, they analyse the data, they consult with communities, they’ve got equality and practice assessments in place. It’s that sort of thing. They get to level four; they’re really using that data and changing services.’

(Assessor, Intermediate Supplier, DWP)

6.2.3 The role of contract managers

At the point at which a contract is in place between the Department and a particular supplier, the responsibility for ongoing monitoring of the requirement passes from the intermediate supplier to the contract management team, as this interviewee explained:
‘Once we have awarded a contract, we then do a handover to the team that is responsible for managing that contract. So they will be fully familiar with the terms and conditions, the provider’s bid that they submitted, what they’re promising to do, and then it’s over to the contract managers to then progress that and monitor the provider’s performance across all the terms and conditions.’

(Intermediate Supplier, DWP)

From our discussions with DWP contract managers, however, it was clear that in practice there was little routine monitoring of the schedule 8 requirements once contracts were in place. Although contract managers acknowledged that the formal responsibility for this passed to them at this stage, few appeared to take an active role in doing so. The rationale for this tended to centre on the relative priority of meeting the equality requirements compared to delivering the agreed performance outcomes, as this quote illustrates:

‘You want them to put people into training, get people into training, get them to work, and so on. Those are the outcomes that you are looking at.’

(Contract Manager, DWP)

As this team leader explained, it was felt important to minimise any additional burden on contract managers:

Interviewee: ‘My contract managers are there to make sure that the contracts get delivered. It’s difficult to load even more onto them. They do quite a huge job already in terms of covering all the contracts.’

Interviewer: ‘So who does anything with the information that is collected?’

Interviewee: ‘Well, it’s collected, it’s checked and that’s it, as far as I’m concerned.’

(Contract Manager/Team Leader, DWP)

Another interviewee discussed this in terms of the potential impact on suppliers, and was very conscious of the need to maintain proportionality by avoiding imposing any unnecessary or potentially burdensome requirements, while at the same time ensuring that the services delivered were in line with expected standards. For public employment services, however, and in line with the public sector equality duty, attention to race equality was argued to be ‘a fundamental part of our expectations’.

In some cases, it was clear that contract managers would only envisage becoming actively engaged in monitoring compliance with the equality requirement if a specific problem arose, which happened only rarely:

‘Somebody may complain about their policies, it’s very ad hoc, and it depends on the individual to raise that complaint, but we don’t go out and monitor it on an organised or active basis through the life of a provision.’

(Contract Manager, DWP)
Moreover, some interviewees explicitly viewed the identification of issues and problems as the responsibility of the intermediate supplier, as this quote illustrates:

‘If there was a problem, [name] would flag it up to the individual contract manager to then take up with the provider. So, yes, I suppose you’re relying on [name] to flag that up, but it is good, that system works in other forms and we are made aware when certain reports aren’t ready, haven’t been submitted, because it’s up to the provider to submit things through [name].’

(Contract Manager, DWP)

This essentially reactive approach by contract managers was also borne out by the experiences of DWP suppliers during the life of a contract. They reported having little knowledge of what happened to the monitoring information they were required to collect, and in some cases interviewees were not even sure whether this was being regularly requested of their organisation. They were not being asked for this information by contract managers in the same way as they are required to supply data relating to performance and outcome measures.

‘I’ll be honest with you, this particular contract, the pressure’s been on all the way through because it has never produced the results that people expected, so the pressure has been absolute…and things get squeezed out is the issue, so you have to have something that stimulates you to get back to the things that you’re maybe missing. You have to do your financial management or your company goes under. You don’t have to do your equal opportunities management because nobody would notice if you didn’t do it every quarter to be quite honest.’

(Supplier, DWP)

On the other hand, although this appeared to be a less common experience, some DWP staff had spent time working with suppliers on developing particular aspects of their diversity policy:

‘What I am more interested in is how robust their policies are and do they live the policy? And to do that, although I’m not managing contracts as such, I do meet and visit contractors. I was with one six months ago and I actually spent the afternoon going through their induction training.’

(Senior Procurement Team, DWP)

### 6.2.4 Sanctions

There was a widespread sense among interviewees that the DWP process contains few effective sanctions for suppliers who fail to meet the requirement or who are minimally compliant. One large supplier argued forcefully that there were few points attached to this in the initial tender assessment and no thorough auditing of actual practice, with the effect that equality issues were likely to slip down suppliers’ agendas in the ways described above:
'It has to score. There have to be real marks attached to ability to demonstrate not just to pay lip service to but ability to demonstrate commitment to diversity... otherwise organisations are not incentivised. They’re all bottom-line driven and they’re not incentivised to go and do this otherwise.’

(Supplier, DWP)

Some officials took a fairly robust view of this issue and argued that suppliers with any real problems in this area would not pass the initial tendering process, limiting the scope for poor practice. For instance, one contract manager said simply, ‘If they don’t have it then they don’t get through the accreditation process’. Others acknowledged that perhaps more needed to be done to demonstrate a willingness to sanction poor performance. One interviewee, while emphasising that the preferred approach would always be to work with suppliers to address areas of weakness, there did ultimately have to be a sanction:

‘At the end of the day, if we have said that this is an area of importance and if a provider has woefully failed to show that they’re going with it, I think we probably should take a contract away.’

(Procurement Specialist, DWP)

The intermediate supplier also argued that there was a growing need to demonstrate the seriousness of the commitment to equality, so that if a supplier had committed to make certain changes and then failed to do so this, some effective sanction would be applied.

‘What happens with the ones that are less satisfactory I think is somewhat different now, again, because some of these people are in the third time they’ve been looked at, and if they apparently haven’t taken any notice of what they’ve been advised to do, then you can’t keep saying that, because then what’s the point of the exercise?’

(Intermediate Supplier, DWP)

Although they were aware of only one such case, the intermediate supplier for DWP had worked with a contract manager to have a contract suspended because of a provider’s persistent failure to meet the equality requirement, and they had been obliged to go through the entire tendering process again, demonstrating that there is some form of sanction being applied. McCrudden (2009), however, argues that contract termination is unlikely to be considered proportionate, and that public authorities need to find other ways of making the equality duty effective, particularly at the start of the procurement process.
6.3 DCSF experiences

6.3.1 Advising suppliers of the requirement
As discussed in Chapter 4, the procurement at DCSF was dealt with as a competitive dialogue under Official Journal of the European Union (OJEU) rules. The requirement was introduced at the pre-specification stage, and before the Invitation to Tender (ITT) was issued, and applied to the lead contractor for the Children’s Centres.

6.3.2 Assessing compliance
The centralised procurement and accreditation process at DWP provides a mechanism which allows for effective monitoring of compliance with the equality requirements, even if its potential may be under-exploited at present. By contrast, the arrangements for the Children’s Centre procurement at DCSF are more diffuse, and lines of accountability are correspondingly less clear.

However, at the top level, at the early stages of the contract, the prime contractor was subjected to a robust level of scrutiny by the department, with regard to complying with the requirement; and which continued through regular meetings between the contractor and departmental officials.

‘Obviously we have policies in all our areas, and, yes, the department has scrutinised and asked for evidence of our policies, that is very transparent. We have monthly contract meetings, and, as I say, it wouldn’t be less than weekly contact with policy leads who will scrutinise and ask questions and, for instance, on diversity, would be one aspect of the questioning; there would be questions asked about everything, from value for money and so on. So, yes, I feel that we have a robust level of scrutiny with the department. For instance, in the early stages of our contract, we took every, every single post that we recruited to the department and they were given a summary of the skills, the background, the experience… There was absolutely very open advertising, and we shared questions that we’d asked, process that we had taken, all of that was entirely made available to the department. And it wasn’t just made available, the department requested it. So that’s very much a proactive relationship.’

(Intermediate Supplier, DCSF)

During the life of the contract, there appeared to be a general expectation that the equality requirement would be monitored by procurement teams, as this quote illustrates:

‘I would expect the information for that update to come from procurement colleagues and it may be that they in turn would need to get it from children’s sector policy colleagues.’

(Policy Key Informant, DCSF)
Similarly another DCSF interviewee said:

‘You rely on the relationship between the contract manager and the organisation and the organisation’s contract manager very much.’

(Policy Key Informant, DCSF)

We found no evidence that this was happening in practice, however. The person responsible for managing the lead contract for the Children’s Centres admitted ‘I didn’t know of the existence of the pilot’ and as a result:

‘We have monthly contract meetings face to face and between them we have telecoms, and I ask them a range of questions. “How many Centres are there? What are the issues?” I have never asked them about their recruitment policies and how they’re implementing the requirements that we’ve placed on them as part of this pilot.’

(Contract Manager, DCSF)

It was argued by procurement staff at DCSF that while they had some ‘influence’ over contractors, they had only weak sanctions – ‘baby teeth’ available to them. There are also capacity issues for procurement staff within DCSF more generally which may be less applicable to other departments where much larger contracts are the norm:

‘The vast majority of what we buy is bought by contract managers out in a highly devolved department...almost none of our 1,400 purchasers out in the wider departments are qualified.’

(Policy Key Informant, DCSF)

Because of their position in relation to local authorities and Together for Children, and given that there appeared to be little monitoring of the requirement even in the lead contract, it is perhaps not surprising that Children’s Centres lacked awareness of the pilot and of the equality requirement itself. While Children’s Centre staff were very familiar with the expectation that they will provide detailed information (including ethnic monitoring) on their client base, they have not generally been expected to provide this for staff and this had not changed as a result of the pilot. There was a widespread understanding that this information would be collected by local authorities, as part of their HR function, and this was not something with which Children’s Centres had generally engaged. In some cases Centres commented that they had been asked to provide this information in the past, but were not currently being expected to do so. This again tended to be attributed to the fact that this would duplicate local authority monitoring information:
‘I mean obviously they do collect it in terms of their HR and in terms of their recruitment they do collect ethnic backgrounds of people, so they do have statistics and I know of course they are looking and they monitor, as an organisation, how they are achieving on their equivalent of staff from the black and minority ethnic community. That was raised at a divisional meeting. I think it is probably collated, they already know that anyway and so perhaps they feel we don’t actually have to put it down any more because HR have got that.’

(Supplier, DCSF)

6.4 Conclusions

The equality requirement was introduced at slightly different stages in DCSF and DWP. At DCSF, the tenders were assessed via a standardised formal evaluation by procurement staff before the contract was awarded. At DWP the tenders were assessed by an intermediate supplier before being passed to the procurement teams.

Despite having the formal responsibility for monitoring the equality requirements once a tender is awarded, contract managers did not generally appear to be playing a pro-active role in this respect. In DWP they tended to respond to issues as they arose, because of other demands on their time, and an over-riding emphasis on meeting outcome targets, while in DCSF other aspects were being monitored but a limited awareness of the equality requirement meant that this aspect had not been covered in regular monitoring processes.

There was some concern about the need to demonstrate seriousness about compliance with the requirement by being prepared to sanction suppliers who did not comply, and one DWP contract had been temporarily suspended as a result of a supplier failing to undertake agreed measures.
7 Impact of race equality pilots

7.1 Introduction

This chapter explores the impact of the requirement, whether positive or negative, looking at the experiences of the departments implementing it and those of suppliers and subcontractors. A key concern is to explore any additional direct or indirect costs incurred by suppliers, and any effects these might have had on patterns of tendering activity.

7.2 Departmental views

The intermediate supplier for the Department for Work and Pensions (DWP) commented that their experiences in implementing the requirement with suppliers had been positive overall. The quality of information provided by suppliers was seen to have been of better quality than expected by the Department, and they had not encountered instances of bad practice:

‘I think, in general, it was expected by DWP, that the actual responses would not have been of the quality that we’ve had, so I think that overall, the responses have been better than were expected. I think they were fearing that this might expose a number of things, when, in reality, I don’t think it has.’

(Intermediate Supplier, DWP)

It was also argued that the move to a more centralised procurement system had improved the DWP’s own knowledge of its contractor base, whereas the previous regional commissioning structure had tended to militate against the development of a strategic overview. One DWP official also contextualised the introduction of the equality requirement as part of a broader process of improving service delivery and professional standards among its supplier base, seeking:
‘Greater clarity about where they’re adding value, greater ability to look along the whole supply chain and see whether it’s delivering across the whole population. Much more sophisticated measurement and management tools than we’ve had in the past and much more transparency about performance data...those are the things which should generate a number of positive outcomes, one of which ought to be organisations which deliver better on racial equality.’

(Policy Key Informant, DWP)

Contract managers in DWP had anticipated few problems in implementing the requirement, feeling that equality issues were ‘implicit’ and ‘fundamental’ to the services being delivered, and had generally found this to be the case, saying ‘suppliers generally accept the responsibility’ and that no-one had expressed concerns about not being able to meet the requirements.

The Department for Children, Schools and Families (DCSF) argued that the pilots appeared to have had little or no impact, partly because of implementation issues in a pressurised commissioning environment:

‘I don’t think the pilot has taught us any lessons apart from it’s very difficult to get a policy team to do anything as a pilot, and that’s the other thing – because it was deemed as being a pilot they thought it was being extra work for them and taking their focus off their delivery of their policy whereas if we put it in as being a normal run of the mill best practice procurement consideration then that would have some effect.’

(Policy Key Informant, DCSF)

7.3 Suppliers’ experiences

Many suppliers were not aware of the pilot, across both DCSF and DWP. As discussed in Chapter 6, those supplying to DWP tended to be aware of the schedule 8 equality requirement, while DCSF suppliers, while not generally aware of a specific requirement, tended to have routine equality monitoring in place.

‘It is such an integrated part of practice if you have worked in this borough for any period of time, that is just the way we work. I don’t know the degree to which there is any check on compliance with policy and procedure but I wouldn’t say I find it a burden at all, no.’

(Supplier, DCSF)

For the majority of suppliers interviewed, the requirement appeared to have made little or no impact, either because they were already doing enough to meet the conditions, or because any additional work which was required had been fairly minimal. This comment was typical of these views:
‘I don’t really think that it probably had any impact on the organisation, because we are so conscious of being inclusive in what we do, I don’t think it had significant impact. We would have done it anyway, without having that as part of the accreditation process.’

(Supplier, DWP)

None of them felt that it had exerted an influence on decisions about whether or not to tender.

A number of suppliers also expressed the view that it has been a positive outcome for them to review and update their equal opportunities policies. Although they had done so in response to the requirement, they recognised that this was something they would have needed to tackle at some point, and were pleased to have done so.

‘To be fair, I think it has been a positive thing to do, because it certainly has made us stop, take a check, and reflect and to develop and improve our practices, I don’t think there’s any doubt about that; so I think from that point of view it has worked.’

(Supplier, DWP)

This was also the experience of the intermediate supplier for DWP, which had received positive feedback from suppliers:

‘There are some people that have taken their assessment quite seriously and have wanted to improve in those areas. I think we had a couple of examples of that where people have come back and said, “we never thought we’d say this, but filling all this out has been useful to us”.’

(Intermediate Supplier, DWP)

Even where there was some associated increase in cost or time, this was not generally seen as disproportionate. For instance one DWP supplier, in discussing the potential ‘burden of compliance’ with the equality requirement, drew a comparison with the information collected on financial issues, which was more extensive and took longer to complete.

‘Let’s compare it then to the increase in new provision on financial information. I would say the increase in the information on the financial side has probably been more of a burden than the equal opportunities side, although it’s still difficult. Don’t get me wrong I’m not saying these are things that can be knocked up in 20 minutes! But certainly not to an extent that would make me think that I’m not going to bother.’

(Supplier, DWP)

However, monitoring information that appears to be collected for its own sake can potentially lead to a degree of cynicism about commitment to equality policy. One DCSF supplier commented that the organisation received no feedback on what was done with the information they provided, saying:
'I mean I must say that I don’t find Together for Children at all helpful. They are just one more lot of people wanting information that they take and go away with it and don’t bring anything back.’

(Supplier, DCSF)

A number of suppliers argued that there was a tendency for the approach adopted to encourage lip service. One supplier put this view particularly strongly, arguing that there was little point in the initiative:

‘I’m afraid I think it adds no value whatsoever. I can answer that in a tender no problem whatsoever, I can write you an equal opportunities policy and include it in my tender, I may or may not get one or two points scored against me for it, but there is no substantial test of my genuine commitment to diversity.’

(Supplier, DWP)

7.4 Supply chain issues

At DWP, the issue of ensuring that the equality requirement filters down to subcontractors further down the supply chain was also acknowledged to be of growing importance in a policy environment which is seeing a shift towards commissioning from large prime contractors:

‘How will that look when, for example, a Senior Research Manager, a contract manager then, will have this big supplier with a huge supply chain? How are you going to ensure all these issues are looked at in such a long supply chain, whereas my team probably have a provider with no subcontractor or one and it’s a different relationship entirely.’

(Key Informant, DWP)

This was not something which had a been a primary consideration in the first year of implementation, and it was argued by the DWP intermediate supplier that there is a need to raise awareness of this issue among contractors, as some buy in goods and services without thinking of this as subcontracting, and so are unlikely to consider the equality requirement in this context; ‘there are some people that will buy specialist services and they’ve not really thought about it’. Contractors’ current practice appears to vary widely. In some cases, contractors said that they did require all the people working for them to meet the schedule 8 requirements in the same way as they did:

‘We only use organisations that we know are likely to meet all the same standards and impart the contract requirements that we have over to them.’

(Supplier, DWP)

Another supplier commented that they deliberately kept their supply chain short, partly in order to ensure that they were able to exert sufficient leverage with subcontractors:
‘When we’ve got the subcontractors, let’s say somebody wants to be a subcontractor to us, we take them through a strenuous process. We help them through it, we’re asking all the questions that are asked of us. If we’ve got a DWP contract and it comes to us and we’re going to subcontract it, we are not subcontracting it to somebody who’s then going to subcontract it further down the chain. It’s only one level. If we were subcontracting it to [organisation name] I would not allow [person name] to subcontract that out to anybody else. Our contract is with him. Also because once you get into multiple subcontracting the money reaching the client activity reduces at each stage.’

(Supplier, DWP)

However, not all of the information provided by suppliers was necessarily currently being subjected to very close scrutiny, as this quote illustrates:

‘DWP are saying this is what we want you to deliver, so all we’ve done is copy that and pass that down to the subcontractors…because of the number of subcontractors that come through we would take people on their word to an extent. Once we go back to the subcontractors to say who we would like to work with I’d like to think, but I’m not totally sure, that those on the business development team would look in more detail as to what does the policy contain, is it in line with DWP expectations.’

(Supplier, DWP)

Indeed, some contractors, including those which had been very proactive in monitoring the impact of equality policies in their own organisation, were not engaging in any systematic monitoring of their subcontractors at all.

‘I think the honest answer to that is we don’t know and it is probably not something that we do and it is probably something that we should do, so I don’t think we are necessarily monitoring the diversity of their workforce and we probably ought to be.’

(Supplier, DWP)

Some suppliers were acutely aware that they were in the process of moving into a new environment, as far as this is concerned, and needed to plan for this:

‘Historically we’ve only actually subcontracted quite a small amount of what we do… So for the first time really we’re moving into a sort of area where we will have a very large network of subcontractors, so we are, as [name] is thinking at the moment about the different things that we need putting in place to kind of ensure that we’re managing our supply chain in a way that we want it and also driving behaviours in our supply chain that we want to promote.’

(Supplier, DWP)

One DWP contract manager also argued that the direction of monitoring could sometimes run in the opposite direction, with prime contractors being carefully observed by smaller operators in the field who did not hesitate to challenge their diversity credentials.
'One of the spin-offs, I suppose, of having big contractors with many small provider specialists is that subcontractors keep an eye on them as well. So if they think that a large prime provider is not fulfilling the diversity equality requirements they will be the first to shout, both at the provider and at us. So everybody’s being monitored, not just by our role in contract management, but they’re monitored by our customers, by Jobcentre Plus advisers, by suppliers, etc.’

(Contract Manager, DWP)

As discussed in Chapter 6, the contractual relationships at DCSF were more diffuse than those at DWP, leading to a more complex supply chain, and possibly diluting the direct influence of the lead supplier:

‘I was going to describe the local authorities as subcontractors almost to you as far as the Together for Children, not delivery of the children’s services is concerned. But there’s no formal arrangement with that, and so it’s likely, yes, that local authorities have been at the forefront of the development of equality and diversity policies…but in those circumstances, [name] as the delivery platform organisation has no control of that.’

(Lead Supplier, DCSF)

Experiences elsewhere also suggest attempting to extend an equality requirement along the supply chain can be a challenging area. Transport for London have an explicit requirement that their equality requirement is cascaded down through the supply chain (Godwin, 2009) while the Olympic Delivery Authority, although it seeks to encourage this, appears to have no direct influence beyond its first-tier contracting (Smallbone et al., 2008).

7.5 Suggestions for improvement

Suppliers identified a number of areas where they would have welcomed additional support or assistance in meeting the requirement. One suggestion was giving greater prominence to the requirement in the initial stages. As we have seen in Chapter 5, many suppliers had limited awareness of the requirement. Some suppliers had no recall of this being discussed in pre-tender briefings; one said that if the equality requirement had been mentioned they felt that there had been no particular emphasis on this aspect, saying ‘certainly it wasn’t brought to our attention that it would be an important part’.

Suppliers would also have valued advice on how they could source particular services which they were being advised to provide. One supplier had been advised during the accreditation process (as part of a conditional pass) that it would be good practice to provide a complaints leaflet in several different languages, in order to meet the needs of the local population, but the organisation had made little progress with this, not because of a lack of will, but because they had failed to find a suitable subcontractor:
‘Now, I’ve asked; nobody’s been able to tell me who does that service for you. I’ve tried going to the local ethnic minority association, and I’ve done this on several occasions, and I’ve never had a reply: If you ask somebody at the council or whoever and nobody’s quite sure who does it. Somebody somewhere is getting it done, but I’ve not been able to get that kind of information; and obviously that’s a huge cost implication to do something like that with potentially no return.’

(Supplier, DWP)

There is potentially a role for intermediate suppliers and contract managers in providing information and contacts for these kinds of practical support to help suppliers meet the requirement, for instance via the website used for the procurement process.

There was also felt to be a particular need for guidance on developing and implementing equal opportunities policies for smaller businesses. Many existing models have been developed for large public sector organisations and may not be the best fit for a small company or for a voluntary or community sector organisation.

### 7.6 Conclusions

We found no evidence that the equality requirements had been burdensome to suppliers, in terms of either time or direct costs. Suppliers also reported positive benefits in terms of improving their policies and their capacity to bid for Government contracts. However, suppliers would have welcomed additional assistance in meeting specific aspects of the requirement, and would also have liked a clearer sense of what the monitoring data they provided was being used for. The impact on subcontractors, and mechanisms to monitor this, may be useful issues to explore in future.
8 Broader views on procurement and race equality

The extent to which public procurement can be used to affect change in employers outside the public sector has gained prominence in public policy contribution to the equalities agenda. However, as we have seen from the evidence from current practice from the pilots, there is a general lack of clarity in the policy debate about the role of public procurement in social policy within the pilot departments. For the Procurement pilots, there is an even more important debate about the benefits of building race equality in the procurement process, and the use of contract compliance specifically to raise the level of ethnic minority employment.

8.1 Race equality in procurement

The extent to which race equality in particular is relevant in public procurement is much more easily resolved when it affects public sector bodies, as it is often part of their equality duty. Increasingly, the debate at policy level is how to work through into detailed contracts with suppliers, the need to align with what government is trying to do in relation to race and diversity equality. But the weight of evidence from this evaluation suggests that there is a more complex interaction between [equality] policy and procurement specialists from their respective analyses of the equality duty. The significance of public procurement as a means of influencing social policy is that it raises issues about both EU and domestic procurement law, which also guide the actions of practitioners who undertake public procurement. Perhaps this, more than almost anything else, appears to determine the way that the Procurement pilots have been regarded, and so played out, in the pilot departments. At a day to day level, contract delivery (outcomes) are weighted in the balance against other policy considerations. In practical terms, this means that unless the policy under consideration is specified in contracts, procurers will tend to focus on the [performance] outcomes.
‘So in ethnic diversity terms, for instance, if we wanted to achieve an outcome of improving ethnic minority employment rates, we would need to say so, because that’s what the contract would then be for. Yeah? I think that’s where it gets very tricky and it gets into legal issues.’

(Senior Procurement Manager, Department for Work and Pensions (DWP))

However, there was some evidence that senior policy officials are increasingly looking at the examples and lessons from public authorities and public bodies, outside Government departments, that have used the procurement lever to influence the practices of [supplier] employers.

‘In the areas of diversity, yes, in fact I looked at some of the work with the London local authority, where I think they put similar things in place for some of their procurement, and there was a lot of liaison between their office and ours in terms of how we might incorporate some of the terms and conditions into our contract.’

(Senior Procurement Manager, DWP)

At one level, some senior policy officials believe that race equality is central to the delivery of their department’s core function, and that it would seem almost incongruous then that race equality would not be seen as relevant to their procurement of goods and services.

‘When would I see it [race equality in procurement] as relevant? Well, as a Government department, we have very clear, very transparent policies of our own, and I would imagine that, if we’re letting major contracts for the suppliers, I would have thought we would have an expectation that they would also adhere to similar policies. To me, it’s a standard that should run through every organisation. Maybe I’m being naïve, but I think I would be more surprised if it didn’t, and I’m not sure that we’ve put an additional burden on our contractors, by saying, “we’re part of this pilot”. We want to make sure that everybody’s recruitment policies contain best practice of equality of opportunity, and it would surprise me if they turned around and said, “oh, we don’t do that, anyway”.’

(Policy Project Manager, Department for Children, Schools and Families (DCSF))

As we alluded to earlier, the lack of clarity in the policy debate about the role of public procurement in social policy has also had some effect on the way the Procurement pilots have been implemented, and on subsequent practice surrounding them.

8.2 Use of contract compliance

When considered more broadly, there is some divergence of views between procurement specialists on the one hand, and policy and equality specialists on the other.
Discussions with senior procurement specialists and contract managers suggest that many remain to be convinced the case has been made for the advantages of contract compliance, compared with possible alternatives, to achieve that policy aim. At its starkest, the concern is described in terms of a mismatch about the extent to which [departmental] policy expectations, expressed through contract compliance, are able to change attitudes in practice. Thus, whilst procurement specialists at DWP, acknowledged that existing procurement practice is predicated on equality, by making services appropriate and responsive to the needs of diverse groups as customers, they nevertheless questioned the legality of using the procurement process to increase supplier diversity, for example.

‘Our procurement processes are fair and open. So we couldn’t, for instance, award a contract on the basis that we wanted to improve the racial diversity of our supplier base. We would probably be in court within a week. We just couldn’t do it. We have to award on the most economically advantageous tender.’

(Senior Procurement Manager, DWP)

With regard to specifically increasing suppliers’ ethnic minority employment through contract compliance, some procurement specialists did not believe there was sufficient evidence this would have a lasting effect on suppliers. Indeed, some highlighted the potential difficulties of using contract compliance to achieve such an aim. They believed large suppliers, for example, would be able to move staff around in order to meet such a requirement, but without any fundamental changes in their practices.

‘It’s a common feature when you’re managing contracts that are in different places in the country. For example, what you’ll sometimes find is a contract performance will dip, say in Sunderland, and you’ll raise it with the provider. What the provider does of course, is they get their best manager and put them in Sunderland and get performance up. When performance is up they move the best manager to the next place you’re complaining about. So in other words providers will do what turns the money over. If you want them to narrow the ethnic minority employment gap, they will do it, believe me they’ll do it, but they might damage something else.’

(Senior Procurement Manager, DWP)

For some contract managers, suppliers’ ability to deliver the specific outcomes of their contracts was the most important aspect of their management role, irrespective of the type of staff they employed to achieve those outcomes, and they were wary of anything that might potentially detract from this.

‘I feel at the moment I concentrate more on the skill levels of the people who the providers have, and if those people who they’re suggesting are going to be delivering for us, then I would look mainly at that. As long as you’ve got the skill levels, I wouldn’t look at the ethnicity of the individuals.’

(Contract Manager, DWP)
Other contract managers took a contrary view, and did not object to the use of contract compliance to effect change. In their view, whilst it should not have been necessary to use such a measure, it was nevertheless the most effective means of ensuring that suppliers would provide the best service that met the needs of diverse groups.

‘I feel that if we are buying a provision and are placing our customers in that provision, we should be placing them with organisations that are not [only] opening fair to all, but seen to be opening fair to all; and have no restrictions on that person whatsoever. I’m more comfortable dealing with such an organisation. I would like any customer that we sent to that organisation to have the same experience as every other person. And that’s the type of provision I want to buy and I welcome any guidance and any instruction that providers are given.’

(Contract Manager, DWP)

Contract managers of this persuasion tended to consider contract compliance not only as the most effective means of actually getting organisations to think about their policies and practices, and whether these were fit for purpose; but also to raise suppliers’ awareness of equality issues.

‘If you have got a low number of people from ethnic minorities within your organisation, I think it helps you to look at what you are doing in practice to determine whether there are other things that you could actually do to increase the numbers of people from ethnic minorities.’

(Contract Manager, DWP)

Whilst they accepted there was some merit in adopting a voluntary approach as a possible alternative, those contract managers were convinced that if the policy was to change the policies and practices of the majority of suppliers, the balance of evidence was weighted in favour of contract compliance, as is demonstrated by the remarks of these two DWP contract managers.

‘I still believe that having it as a compliant is much more effective because I think… the public sector has a duty, whereas the private sector doesn’t have that duty; and if you don’t make it compliant, then they think it’s going to be fine, and they might be able to get away with it.’

‘Let’s be honest, we’re all human and if it wasn’t something that was written down that you had to do, then they potentially could let it slip.’

(Contract Managers, DWP)

It is perhaps also unsurprising too that some contract managers regarded contract compliance as providing them an additional assurance in their management of all aspects of their contracts, and backed by evidence about what has been agreed with suppliers. This quote is illustrative of these views.
‘I don’t speak for any other contract manager, but personally speaking if there was a dispute then I would like to have something to say to the provider. “Here, that’s what you agreed to; here’s what you said would do; here are the documents that you provided me that assured me of such”, rather than say, “you told me at the time that it was your opinion that...” I would want the evidence to back my argument, and the argument of the customer, and the issue that the customer had, escalated to that stage, I would want dealt with to my satisfaction, as opposed to something that was verbally agreed.’

(Contract Manager, DWP)

In practice though, the argument about the role of contract compliance in influencing organisational culture and effecting change in the policies and practices of organisations is more subtle. Notwithstanding their particular stance in the debate, senior officials in the pilot departments acknowledged that departments have a responsibility to explain the role of public procurement in the wider equality agenda of Government. In this regard, the key issue for discussion is whether, and to what extent, the equality and diversity focus could be applied to a wider range of public procurement. Some senior officials felt it was important to inform supplier organisations about departments’ expectations that any supplier to Government also encompasses diversity and equality within their workforce. In particular, it was essential to send out a message that during the procurement process, departments would also consider whether the supplier organisation is one that Government would like to do business with, because they are supportive of Government’s agenda on diversity and equality, and not because they submitted the cheapest bid.

‘If we’re giving companies multi-million pound contracts to supply paperclips I think it’s quite legitimate for us to convince them of the benefits of that [equality and diversity] and not just to pay a lip service to it, but through monitoring how that contract is delivered and making sure providers are aware that we don’t just aspirate on a piece of paper in a policy; that when we come to monitor them, we’re not just looking at the paperclips that come off the production line. We’re also looking at their workforce and employees, etc, and conditions on that, and discussing that as part of the contract management.’

(Senior Procurement Manager, DWP)

It is perhaps here that a possible alternative may be seen to emerge from the debate about the relative merits of contract compliance. In the view of some senior official, it would be possible to achieve equality and diversity goals through supplier relationship management; in terms of talking to, influencing, discussing and explaining departmental expectations to suppliers, and making sure that they know what is important to the department, with regard to how they conduct their business.
‘It’s about influencing and helping organisations to change their practices. It’s cultural shift and change and it’s about building up relationships with people, building trust and openness and being able to enter into discussions with that organisation about things like how they apply their HR policies and going in and observing and seeing how the organisation’s working, understanding that and actually talking to them and having an adult conversation with them about those things. Which is, to my mind, much more important and more influential than going in with a clipboard.’

(Senior Supplier Relationship Manager, DWP)

There is no doubt that in this debate policy makers also have to be aware of some of the potential difficulties of building race equality in the procurement process, and with the use of contract compliance to raise the levels of ethnic minority employment in supplier organisations. Procurement specialists in particular were concerned about a possible backlash from suppliers concerned about being forced down that route rather than being persuaded and convinced of the benefits of adopting good equality and diversity practices. The perceived risk here is that suppliers could artificially adjust the market and recruit people for the wrong reasons. With this in mind, it was important for this evaluation to also seek the broader views of suppliers on procurement and equality.

It is important to reiterate the fact that the suppliers included in this research claimed there were benefits to having equality and diversity policies in place. Given the evidence that suppliers had not found it difficult overall to meet the equality requirements in their contracts, it was perhaps not surprising that almost all the suppliers believed there were more advantages than disadvantages to contract compliance.

‘I think that some organisations like ourselves would, because we are so conscious of the agenda around inclusivity, that we would automatically do that without any doubt. But I guess there would probably be organisations who would not necessarily put in the time or the effort, and therefore if it wasn’t part of the contract compliance process, probably wouldn’t do very much about it.’

(Supplier, DWP)

In this regard, it was also notable that suppliers appeared to support the use of public procurement to achieve the Government’s wider agenda on equality and diversity.
‘My view is that it is a positive thing and I’m very much in favour, in terms of the Government views, on clauses and schedules like that to try and drive change. And we, certainly, are very interested in the work that’s going on round about building social clauses into contracts which is looking at particularly local government and public sector; how they can build clauses into contracts which involve supplier organisations in making a commitment to employ people, be it providing training opportunities, apprenticeships or providing jobs as part of an agreement. So, I think it’s a good use of public resources to undertake initiatives like that because it does drive change. Because it’s contracts which people are committed to.’

(Supplier, DWP)

Indeed, some suppliers thought there was a need to go further and provide organisations with support to enable them improve their practice.

‘I think that working with those organisations to own a reason why and to own a solution to how it can be different, rather than monitoring information, recruitment, monitoring information is much more important. And also there’s so much to unpick; it’s not just the volume and numbers of people and whether that matches the percentage in the community, it’s the calibre of jobs, the opportunities that each employee gains, and fundamentally the training and ongoing opportunities that they receive. That’s really critical.’

(Supplier, DCSF)

8.3 Conclusions

The evidence from this chapter suggests there is ongoing debate in the pilot departments about the role of race equality in procurement, and the use of contract compliance as an effective means of addressing policy concerns relating to low ethnic minority employment rates. There is a clear need for departments to explain to providers the reasons why equality and diversity have been given prominence in the Government’s economic and social agenda. The evidence suggests further that there is also a need for communication of policy on equality and diversity lower down the procurement process, so that contract managers do not have to rely on their own interpretation of what they consider as their more effective role in procurement outcomes.
9 Lessons from the Procurement pilots

This chapter draws together the key findings reported in the preceding chapters, and the initial conclusions drawn should be interpreted in their light.

9.1 Initial conclusions

Since they were first conceived in 2005, the Procurement pilots have been set up in the three departments selected to pilot the initiative – the Department for Work and Pensions (DWP), the Department for Children, Schools and Families (DCSF) and the Identity and Passport Service (IPS). They have been fully implemented in two of these, DWP and DCSF, but only partially in IPS.

The implementation process has taken different forms in the three departments, with quite different infrastructures which in turn reflect their existing procurement structures. It is possible to identify three types of infrastructures:

• A comprehensive system built on the basis of the establishment of a strong relationship between key policy, procurement and equality and diversity specialists, operating in a centralised procurement system, and who have well-defined roles and responsibilities.

• A devolved arrangement based on a loose association of policy and procurement specialists mainly, with limited input from equality and diversity specialists, and working through third parties in order to achieve the pilot aims; roles and responsibilities can lack clarity.

• An ad hoc, less structured arrangement centred mainly around procurement specialists; there is some input from equality and diversity specialists.

The type of infrastructure established influenced both the selection of the pilot project and the design and specification of the requirements to promote race equality in service delivery.
There is as yet no established model for delivery of the pilots. This is mainly because the proposed secretariat that was intended to support pilot project managers did not materialise; with the result that there has not been a forum for pilot project managers to meet and share practice. In the absence of such a forum, however, DCSF has developed a Framework of Practical Guidance for procurers, which is based on a framework that was commissioned by the Ethnic Minority Employment Task Force in 2005. The guidance contains equality and diversity clauses that could be included in contracts. The model terms and conditions provided as part OGC’s recent equality guidance (OGC, 2008) now also provide a potential prototype. The absence of a common approach in implementation has resulted in the design of different specifications in the race and equality requirements.

The variety of routes and processes involved in the implementation of the pilots have provided a number of insights into their practical aspects at the individual pilot departments:

- There is overwhelming evidence that the Procurement pilots are not widely recognised as a pilot among staff who might be expected to have responsibility for the initiatives. However, pilot staff are fully aware of the salient features of the pilots’ requirements, which are encapsulated in the terms and conditions in new contracts.

- There are capacity issues for pilot staff with responsibility to provide support to suppliers who are having difficulty meeting the requirements, both because of resource constraints and limited experience of equality and diversity issues. In addition, no formal procedures have been set up to enable procurement staff to interact with, and provide suppliers with consistent and ongoing advice and support.

- There appears to be limited monitoring of the equality and diversity conditions in suppliers’ contracts by procurement staff. In the case of DWP there is a lack of clarity about whether ongoing monitoring, as well as initial checking, is the responsibility of an intermediate supplier to the department. This means that procurement staff and contract managers generally have only a reactive oversight role in ensuring compliance.

The provider organisations and suppliers are delivering a narrow range of focused services which are the subject of the pilots. None of those services were specifically aimed at ethnic minority groups. Key issues for suppliers included:

- The majority of suppliers of services that are the subjects of the pilots also have no awareness of the initiatives, although they are familiar with the pilot requirements because they are included in their pre-qualification questionnaire, or PQQ (if relevant), or in tender documents.

- On the whole, the provider organisations and suppliers have not found it difficult to meet the equality and diversity requirements in their new contracts. This is mainly because most have a long-standing relationship with the pilot department, and have had some elements of equality and diversity conditions in previous contracts, albeit not in the formal way required in the pilots.
• There is little evidence that meeting the requirement has been financially burdensome on the suppliers on large organisations. But it was acknowledged that some capacity building would be necessary to bring small suppliers up to speed to meet the requirements, if they become a permanent feature of contracts. But this may be quite costly in terms of resources. There is some evidence, however, that a small number of suppliers have found the requirement a little bureaucratic.

To the extent that the Procurement pilots have been established at all, it could be argued that implementing the requirement with suppliers has been positive overall. It is more difficult, however, to measure their impacts on both the pilot departments and their suppliers.

• The Procurement pilots contain limited sanctions against suppliers who do not meet the equality and diversity requirements. The processes for verifying the information that is requested from suppliers are also not standardised. Consequently, it is difficult to influence suppliers’ practices.

• There is a further problem about how the information that providers are reporting on the ethnic composition of their own employees will be used, especially as there is no provision to verify them. In any case, the proportion of their ethnic minority workforce is not benchmarked to any external standard in order to measure their relative performance.

In practice it might be important to qualify each of the above points at the level of detail, particularly because some are more marked in one pilot department than another.

Despite some difficulties in implementation, the pilots have illustrated the potential to use equality requirements in supplier contract in government departments. The new Equality Act, and the recent issuing of additional guidance by OGC, together with the evidence from these pilots, may provide a clearer framework for other departments wishing to do this in future.
Appendix A
IPS A1
EQUALITY AND DIVERSITY

IPS is committed to contribute to - “A fair and just society which values diversity and gives everyone an equal chance to work, learn and live free from discrimination prejudice and racism”

The main purpose of this Pre-Qualification Questionnaire (PQQ) is to gather some basic details about your company and to assist the Identity and Passport Service (IPS) in deciding which suppliers to short-list to invite to tender.

In order to simplify this process, you do not need to provide supporting documents yet, for e.g. accounts, certificates, statements or policies with this Questionnaire. However IPS HQ Procurement may ask you to see these documents at a later stage. You may also be asked to clarify your answers or provide more details.

Please answer every question, YES/NO. If the question does not apply to your company please write N/A. If however you don’t know the answer please write N/K.

Please return this form to:

Not later than: TIME 17:00 DATE 29/06/06
IPS will contact you again if necessary by: DATE 14/07/06
If you have any queries about this form please contact:

__________________________
QUESTIONNAIRE

Race Relations Act-Part 111 Discrimination in other fields

Q.Is it your company policy to comply with your statutory obligations under Part 111 of the Race Relations Act 1976 (RRA) (Discrimination in other fields) (which applies in Gt. Britain) or equivalent legislation that applies in any other jurisdiction in which your company operates. YES/NO, N/A, N/K

Q. Accordingly, is it your practice not to discriminate directly or indirectly on grounds of colour, race, nationality, or ethnic or national origins in the provision of goods, facilities, or services to the public

Q. In the last 3 years has any finding of unlawful racial discrimination in relation to non-employment matters been made against your organisation by any court, or in comparable proceedings in any other jurisdiction. YES/NO, N/A, N/K

Q. If your answer is YES to the last question, what steps have you taken as a result of that finding or termination of Contract.

Q. Do you have a written policy/action plan on equal opportunities or race equality in relation to the provision of services. YES/NO, N/A, N/K.

Q. If your answer is YES can IPS on written request have sight of the policy/action plan.

Q. In any previous or current contracts for Services, e.g. catering or any similar activity did you:
   a) take steps to guarantee equality of opportunity in access to these services by different racial or other groups or
   b) provide goods or services appropriate to the special needs of any particular group.

Q. Can you supply evidence that your staff have been trained and can demonstrate their ability to carry out their duties in the light of race equality requirements. YES/NO, N/A, N/K.

Q. Can you supply information which describes the specific monitoring practices that you follow to ensure that race equality is enshrined in the delivery of your services. YES/NO, N/A, N/K

Q. If you do not have a written policy how otherwise can you demonstrate that you promote race equality in providing services. PLEASE STATE......

Race relations Act Part 11 Discrimination in the employment field

Q. Is it your company policy to comply with your statutory obligations referred to in PART 11 of the Race Relations Act 1976 (Discrimination in the Employment field) (which applies in Gt. Britain) or equivalent legislation that applies in any other jurisdiction in which your company operates. YES/NO, N/A, N/K.
Q. Are you able to provide information about monitoring employment practice within your organisation. e.g monitoring equality outcomes or ethnic composition of staff in your employment practices.

Q. Do you have a written policy/action plan on equal opportunities or race equality in relation to employment practices.

Q. Have you provided your staff with training to deal with race equality complaints/conflicts. YES/NO, N/A, N/K

Disability Discrimination Act

Q. Do you provide training for all frontline employees and for managers (to include receptionists, security staff as well as recruitment consultants) on enabling, welcoming, and communication with people with disabilities and how to avoid bias and discrimination. YES/NO, N/A, N/K

Q. Do you have a written policy/action plan on disability and diversity YES/NO, N/A, N/K.

Q. Do you have a legal requirement in relation to diversity and specifically disability, both as an employer and a supplier of recruitment services. YES/NO, N/A, N/K.

Q. Do you ensure that your candidate attraction strategies actively seek applications from disabled candidates and candidates from other disadvantaged groups. YES/NO, N/A, N/K.

Employment Agencies

Q. Is your company aware of its responsibilities under the employment legislation and conduct of Employment Agencies and employment Business Regulations Act 2003. Or an equivalent Legislation. YES/NO, N/A, N/K

CONTRACTS

Q. In any previous or current Contracts for goods and services, or any similar activity did you:
a) take any steps to guarantee equality of opportunity in access to these services by different racial or other groups. YES/NO, N/A, N/K or
b) provide goods or services appropriate to the special needs of any particular group. YES/NO, N/A, N/K

Q. In the last 3 years, has any Contract with your company been terminated on the grounds of your failure to comply with:-
a) legislation prohibiting discrimination; YES/NO, N/A, N/K or
b) Contract conditions relating to equal opportunities in the provision of services. YES/NO, N/A, N/K.
Appendix B
IPS A2
Draft questions for IPS suppliers

Please answer the following questions to the best of your ability.

1. How many people does your organisation employ?
   - Less than 50?
   - Between 50 and 250?
   - More than 250?

2. Does your organisation have an equal opportunities policy that sets out its approach to meeting its legal obligations in relation to race and ethnicity, gender, disability, age, sexual orientation and religion or belief?

3. Does your policy identify a board member or senior manager as being accountable for its delivery?

4. Do you carry out diversity monitoring of your workforce? If yes, please tell us the percentage of staff who are:
   - from an ethnic minority group
   - disabled

5. What provisions are in place to train staff on equal opportunities issues?

6. Do more than half of the company's owners consider themselves disabled within the definition of the Disability Discrimination Act 1995?
Appendix C
IPS A3
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WHEREAS

(a) The Authority for itself and on behalf of its Affiliates has requested that the Supplier provides the Goods and/or Services detailed in this Agreement.

(b) Accordingly the parties have entered into this Agreement for the provision of such Goods and/or Services upon the terms and subject to the conditions of this Agreement.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 As used in this Agreement:

"Affiliate" means any of Her Majesty's Government services, offices, departments or agencies, associated or affiliated, and any entity, present or future, directly or indirectly controlling, controlled by or under common control of or with the Authority;

"Agreement" means the front sheet, the attached Schedules and any documents expressly referenced herein;

"Business Days" means any day which is not a Saturday or a Sunday, or a bank or public holiday in the United Kingdom;

"Charges" means the fees and costs payable by the Authority to the Supplier for the Goods and/or Services, as set out in this Agreement;

"Contract Managers" means the individuals named as such in the Agreement;

"Confidential Information" means this Agreement together with all information, whether commercial, financial, technical or otherwise, disclosed by or at the direction of one party or any agent or Affiliate of that party to the other party or an agent or Affiliate of that party either prior to or during the Term of this Agreement, which information may be contained in or discernible from any form whatsoever (including oral, documentary, magnetic, electronic, graphic or digitised form or by demonstration or observation), whether or not that information is marked or designated as confidential or proprietary, and all matters arising in the course of this Agreement which relate to research, development, trade secrets, know-how, ideas, concepts, formulae, processes, designs, specifications, past, present and prospective business, current and future products and services, internal management, information technology and infrastructure and requirements, finances, marketing plans and techniques, price lists and lists of, and information about, customers and employees, and all materials and information belonging to third parties in respect of which either party or any agent or Affiliate of either party or any of its customers or suppliers owe obligations of confidence;

"Control" and its derivatives shall have the meaning given in Section
416 of the Income and Corporation Taxes Act 1988;

"Effective Date" means, regardless of the date of signature of this Agreement, the date that this Agreement shall come into effect as detailed on the front sheet to this Agreement;

"FOI Act" or "FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time and any guidance issued by the Information Commissioner in relation to such legislation;

"Goods" means (where applicable) collectively the goods to be provided by the Supplier as described on the front sheet;

"Information" means all records and information obtained, created, collected or held by the Authority in relation to this Agreement;

"Information Request" means a request for Information within the meaning of section 8 of the FOIA;

"Intellectual Property Rights" means any patent, patented articles, designs, trade marks, service marks, trade names, copyright in all specifications, drawings and technical descriptions, computer software and databases, database rights, moral rights, inventions whether or not capable of protection by patent or registration, whether registered or unregistered and including applications for the foregoing and all rights or forms of protection having equivalent or similar effect anywhere in the world;

"Services" means (where applicable) collectively the services to be performed and/or provided by the Supplier as described on the front sheet;

"Supplier Personnel" means those agents, employees, consultants and subcontractors of the Supplier engaged from time to time in providing the Goods and/or Services and any agents, employees and consultants of such subcontractors who are so engaged;

"Supplier Proprietary Material" means all Intellectual Property Rights which were created or used by the Supplier prior to the Effective Date of this Agreement or which are created independently of this Agreement;

"Term" means the period detailed in the Agreement, for which the Goods and/or Services shall be provided;

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended); and

"Virus" means any "back door", "Trojan Horse", "worm", "malware" or other software routine intended or designed to render hardware or software inoperable or to delete or corrupt data.

1.2 As used in this Agreement:
a) the masculine includes the feminine and the neuter, and vice versa;
b) the singular includes the plural, and vice versa;
c) use of the words "includes" or "including" means without limitation;
d) headings have been included for convenience only and shall not be used in construing any provision of this Agreement; and

e) references to any legislation shall include references to that legislation as amended, replaced or re-enacted and shall include any subordinate legislation made from time to time under that provision.

1.3 References to Clauses and Schedules are, unless otherwise provided, references to clauses and schedules to, this Agreement.

1.4 In the event of any conflict between the front sheet and/or any of the Schedules, then to the extent of any conflict, the following order of precedence shall apply:

- the front sheet;
- Schedule 2 (Special Conditions); and
- Schedule 1 (Terms and Conditions).

2. THE PROVISION OF GOODS AND/OR SERVICES

2.1 The Authority hereby engages the Supplier to provide the Goods and/or Services (as applicable) in accordance with the terms of this Agreement. The parties may agree that specific service levels shall apply to the provision of the Services and that a failure to meet such service levels will lead to the application of service credits. In the event that this provision applies, then such service levels and/or service credits shall be detailed within Schedule 2.

2.2 This Agreement shall come into force and effect on the Effective Date and shall remain in force for the Term, always subject to the provisions set out in Clause 20 (Termination).

2.3 Where the Supplier is to provide Goods, then the Supplier shall only obtain Goods of suitable specification and quality for the application to which they are required and shall ensure that they conform in all respects with all applicable specifications. All Goods shall be delivered by the Supplier to the instructed points of delivery.

2.4 Where the Supplier is to provide Goods, then the Supplier agrees to provide the Authority with training in respect of the Goods if requested by the Authority, at such locations, Charges and times as are mutually agreed.

3. TESTING

3.1 Where the parties agree that the provision of Goods and/or Services should be subject to acceptance testing, then the parties shall agree the appropriate tests and the timetable to be applied to such tests in order to demonstrate that the Goods and/or Services meet the Authority's requirements. Unless otherwise agreed, acceptance testing shall be performed by the Supplier, but where the Authority so requests, shall be attended by the Authority.

3.2 The Authority shall accept the Goods and/or Services once it is satisfied that they have passed all their relevant acceptance tests and/or have otherwise met the Authority's stated requirements. No payment of Charges or any other fees or any use of the Goods and/or Services shall constitute acceptance or deemed acceptance of the Goods and/or Services.

3.3 Title to any Goods supplied under this Agreement will pass to the Authority on delivery or on payment whichever is the earlier. Such passing of title shall be without prejudice to any right of rejection arising under this Agreement or otherwise in connection with the Goods and/or Services.
4. CHANGE CONTROL PROCEDURE

4.1 In the event that a change to this Agreement is requested by either party, a written request may be submitted to the other party's Contract Manager, specifying in as much detail as is reasonably practicable, the nature of the change.

4.2 As soon as is reasonably practicable and in any case within five (5) Business Days after sending or receipt of a change request, the Supplier will provide the Authority Contract Manager with brief written details of the likely impact, if any, of the change request on the Agreement and an estimate of the cost of implementation and/or ongoing operation of the relevant change, including any alteration of the Charges.

4.3 If following receipt of the proposal under Clause 4.2, the Authority wishes to proceed with the change request, it shall notify the Supplier. No such Change will become effective until agreed in writing between the parties and each party agrees that it shall not unreasonably withhold or delay its agreement to any such change.

5. THE SUPPLIER’S OBLIGATIONS

5.1 The Supplier undertakes that the Supplier and the Supplier Personnel will have the necessary skill, experience, competence and expertise to perform its contractual obligations on the terms set out in this Agreement.

5.2 The Supplier undertakes to comply with the Equality and Diversity Requirements set out in APPENDIX 1.

5.2.1 The Supplier shall not in the performance of the Contract:

a) discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of colour, race, nationality, or ethnic or national origins contrary to Part II (Discrimination in the Field of Employment) or Part III (Discrimination in Other fields) of the Race Relation Act 1976 ("the RRA")

b) contravene Part IV of the RRA (Other Unlawful Acts); or

c) discriminate directly or indirectly, or by way of victimisation, or harassment against any person on grounds of;

   i) disability, age, sex, sexual orientation, religion; or

   ii) any criterion which is unlawful under the applicable Laws

d) the Supplier shall be responsible for ensuring that its employees and subcontractors and their respective employees comply with the provisions of APPENDIX 1 (Equality and Diversity Requirements) and any breach of these requirements shall be considered as a serious breach in the performance of the Contract.

e) the Supplier is responsible for obtaining all surveys and information necessary for carrying out its obligations under the Contract.

5.3 The Supplier shall ensure that the Goods and/or Services will be provided in a timely and professional manner and in accordance with the time scales agreed with the Authority.

5.4 Where possible, the Supplier shall ensure that the warranties and guarantees on all Goods, and/or Services supplied pursuant to the Agreement will pass immediately to
the Authority or, where so directed by the Authority, any appointed successor to the Supplier, on expiration or termination of this Agreement.

5.5 The Supplier warrants that:
   a) its title to and property in any Goods supplied under this Agreement is free and unencumbered and that it has the right, power and authority to supply such Goods and grant any applicable licences; and
   b) such Goods will be free from all material defects in design, materials, and workmanship and shall be equal in all respects to relevant samples or patterns provided by or accepted by the Authority.

6. ENVIRONMENTAL AND ETHICAL POLICIES

6.1 The Supplier acknowledges the importance the Authority attaches to supporting the Government’s environmental and ethical initiatives and legislature when providing Goods and/or Services to the Authority. The Supplier shall ensure that it complies at all times during the Term with all of the Authority’s environmental and ethical requirements as set out in this Agreement. As part of this obligation the Supplier shall, within ten (10) days of receipt of a request by the Authority, provide evidence and confirmation of compliance with any of the Authority’s environmental and ethical requirements.

7. THE AUTHORITY’S OBLIGATIONS

7.1 The Authority agrees to grant such access to the Supplier’s personnel and utilities as is necessary for the Supplier to perform its contractual obligations, subject to the Supplier complying with the Authority’s policies in place from time to time.

8. PERSONNEL AND CONTRACT MANAGEMENT

8.1 Each party shall appoint a representative as its Contract Manager who shall have full authority to take all necessary decisions regarding this Agreement.

8.2 The parties’ Contract Managers will meet to discuss the provision of the Goods and/or Services at intervals to be determined from time to time by the Contract Managers, or as reasonably requested by the Authority.

8.3 The Supplier’s Contract Manager will be responsible for the Supplier’s staff performing the Supplier’s contractual obligations. The Supplier may change the identity of the Supplier’s Contract Manager provided sufficient prior written notification is given to the Authority.

8.4 The Authority shall be entitled to require the removal of any person engaged in the performance of the Supplier’s contractual obligations (including the Supplier’s Contract Manager) if, in the Authority’s reasonable opinion, that person’s performance is materially and adversely affecting the performance of the Supplier’s contractual obligations. The Supplier shall, as soon as reasonably practicable, replace such person with a person approved by the Authority.

8.5 The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as disability, gender, race, colour, ethnic or national origin, within the meaning of the Sex Discrimination Act 1975 or the Race Relations Act 1976 or the Disability Discrimination Act 1995; and take all reasonable steps to secure the observance of the provisions contained in this Clause 8.5 by all Supplier Personnel employed in the execution of this Agreement.

8.6 Each party warrants to the other that the performance of any Services by the Supplier in accordance with this Agreement shall not give rise to a transfer of employees under TUPE from the Supplier. Each party shall indemnify the other and keep the other
indemnified against all losses, costs, actions, proceedings, claims or demands made against one other which arise out of any breach of this warranty by the other as a result of the application of TUPE, including in connection with any obligations regarding consultation and the giving of information or related to detrimental changes to such employee's working conditions or terms and conditions of employment which arise in connection with the provision of any Services and regardless of whether such claim arises before or after the Effective Date.

8.7 Each party shall promptly notify the other in writing of any claims in respect of which the other may be entitled to claim an indemnity under Clause 8.6 and neither party shall settle any such claims without prior written authority from the indemnifying party and, if the indemnifying party shall so request in writing, the indemnified party shall entrust to the other, the care and conduct of contesting any such claim, and shall promptly give, upon request by the other, such assistance or information relevant to such claim as may reasonably be requested.

9. AUDIT RIGHTS

9.1 The Supplier shall keep secure and maintain until two (2) years after the final payment of all sums due under the Agreement, or such longer period as may be agreed between the parties, full and accurate records of any Goods and/or Services provided (and any other records that the Authority reasonably requests the Supplier to retain) and all payments made by the Authority.

9.2 The Supplier shall grant to the Authority, or its authorised agents, such access to its records as they may reasonably require.

9.3 For the purpose of the examination and certification of the Authority's accounts, or any examination pursuant to the National Audit Act 1983, or any subsequent re-enactment, of the economy, efficiency and effectiveness with which the Authority has used its resources, the Supplier shall allow the Comptroller and Auditor General to examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as the Comptroller or Auditor General considers necessary. This Clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under the National Audit Act 1983, or any subsequent re-enactment.

10. CORRUPTION

10.1 The Supplier shall not:

a) offer to give or agree to give to any person in the Authority's service any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other Agreement for the Authority or for showing or forbearing to show favour or disfavour to any person in relation to this or any other Agreement for the Authority; and/or

b) enter into this or any other agreement with the Authority or any Affiliate in connection with which commission has been paid or agreed to be paid by him or on his behalf, or to his knowledge, unless before the Agreement is made terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Authority.

10.2 Any breach by the Supplier of Clause 10.1 in relation to this or any other agreement for the Authority, shall entitle the Authority to terminate this Agreement forthwith and recover from the Supplier the amount of any loss resulting from such termination and/or to recover from the Supplier the value of any such gift, consideration or commission.
10.3 In any dispute, difference or question arising in respect of the interpretation of Clauses 10.1 or the right of the Authority to terminate this Agreement under it, or the amount or value of any such gift, consideration or commission, the decision of the Authority shall be final.

11. CHARGES AND PAYMENT

11.1 In consideration for the full and satisfactory provision of its obligations in accordance with the terms of this Agreement, the Authority shall pay the Charges in accordance with the invoicing procedure and payment profile specified in this Clause and the Agreement. Each invoice must be itemised and clearly state the applicable Authority purchase order number, and where applicable the project numbers. Where so applicable, the invoice shall be accompanied by a detailed statement which clearly states the time spent by each of the Supplier Personnel in providing the Services during the period covered by the invoice.

11.2 All expenses, in addition to those outlined in this Agreement, must be agreed between the Contract Managers prior to being incurred. All agreed travel and subsistence expenses shall only be payable in accordance with the Authority's expenses policy, as notified by the Authority to the Supplier from time to time.

11.3 The Supplier shall not be entitled to increase its Charges without the Authority's prior written agreement.

11.4 Payment by the Authority shall be made within thirty (30) days of receipt of a correct and properly due invoice and shall be in accordance with the invoicing schedule set out on the front sheet.

11.5 Where the Authority disputes any invoice and intends to withhold payment of all or part of that invoice after the final date for payment, the Authority shall notify the Supplier of its intention in writing before the final day for payment. Such notice will specify:

a) the amount (if any) of the payment made or proposed to be made (and the Supplier shall be required to issue a credit note in respect of the retained balance prior to any payment being made by the Authority), and the basis on which the amount was calculated;

b) the amount proposed to be withheld and the ground for withholding payment; and

c) if there is more than one ground, each ground and the amount attributable to it.

11.6 In the event that the Authority fails to make any undisputed payment by the due date for payment, provided that the Authority has received written notice of non-payment, and if such failure continues for a period of thirty (30) days after the Authority's receipt of written notice that payment is past due, the Supplier reserves the right (without prejudice to its other rights and remedies) to charge interest on the outstanding Charges at two (2) per cent above the base rate of the National Westminster Bank Plc, accruing on a daily basis and compounded on a six (6) monthly basis from the due date until full settlement, which the Supplier agrees is a substantial remedy.

11.7 The Authority reserves the right to make payment by credit card or any other means.

11.8 Whenever under this Agreement any sums of money shall be recoverable from or payable by the Supplier to the Authority, the same may be deducted from any sum due or which at any time thereafter may become due to the Supplier under this Agreement or any other agreement with the Authority or with any Affiliate.
12. CONFIDENTIALITY

12.1 Neither party will disclose any Confidential Information received under this Agreement to any third party without the other party's prior written consent.

12.2 Each party agrees that it shall only use Confidential Information received under this Agreement for the purposes of this Agreement and shall take all necessary precautions to ensure that all such Confidential Information is treated as confidential and not disclosed or used other than for the purposes of this Agreement.

12.3 The provisions of Clauses 12.1 and 12.2 shall not apply to any information which:

   a) is or becomes public knowledge other than by breach of this Clause 12;
   b) is in the recipient's possession without restriction in relation to disclosure before the date of receipt;
   c) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
   d) is independently developed without access to the Confidential Information; or
   e) is required to be disclosed by operation of law (including the FOIA Act), government regulation, or order of a Court of competent jurisdiction, (providing the recipient first gives written notice of such required disclosure to the disclosing party and, where reasonably possible, the disclosing party is given an opportunity to secure confidential protection of such information).

12.4 If the Supplier becomes aware of any breach of confidence by any Supplier Personnel it shall promptly notify the Authority and give the Authority all reasonable existence in connection with any proceedings or other measures instigated by the Authority against such Supplier Personnel.

12.5 The obligations with respect to Confidential Information disclosed under this Agreement shall survive termination of this Agreement and continue for as long as such information remains confidential.

13. ASSIGNMENT AND SUB-CONTRACTING

13.1 The Authority shall be entitled to assign its rights and transfer its obligations under this Agreement to any of its Affiliates without any requirement for consent from the Supplier.

13.2 The Supplier shall not sub-contract any part of the performance of its obligations under this Agreement without the prior and continuing written consent of the Authority in each case, such consent not to be unreasonably withheld or delayed. The grant of any consent by the Authority will not relieve the Supplier from any liability under this Agreement. Each sub-contract shall reflect the terms of this Agreement to the extent that they apply.

13.3 Each party agrees that, during the course of this Agreement and for the period of twelve (12) months after its termination, it shall not offer to or employ or engage as an independent consultant any of the other party's employees who are involved in the performance of this Agreement, without the other party's prior written consent. This Clause 13.3 shall not apply to restrict either party from employing (or offering to employ) any employee of the other party who has responded to general recruitment advertising.

14. INTELLECTUAL PROPERTY RIGHTS
14.1 The Intellectual Property Rights in any deliverables that are specifically developed or created for the Authority shall be vested in and owned absolutely by the Authority (save that the Supplier will retain ownership of any Supplier Proprietary Material which becomes embedded in such deliverables, which shall be licensed in accordance with the provisions of Clause 14.2). The Supplier agrees to (and shall procure that the Supplier Personnel shall) assign and hereby assigns by way of future assignment in the case of copyrights, to the Authority with full title guarantee all of its worldwide rights (including moral rights), title and interest (whether present, future, vested or contingent) in and to such Intellectual Property Rights for their full term.

14.2 The Authority shall be granted a perpetual, non-exclusive, transferable, worldwide, royalty free licence in respect of Intellectual Property Rights subsisting in any Supplier Proprietary Material which is embedded in any deliverables provided hereunder, to the extent necessary to use such deliverables for its business purposes.

14.3 Any materials, equipment or facilities supplied by the Authority for use by the Supplier in performing any Services may be used by the Supplier strictly for the purposes of this Agreement and shall not be re-allocated to any other work whatsoever without the prior written consent of the Authority. All items so supplied shall remain the property of the Authority and the Supplier shall at all times and places keep and maintain such matters under proper conditions and with all due and reasonable care.

14.4 The Supplier shall ensure that it does not infringe any third party's Intellectual Property Rights in its contractual performance and, at its own expense, will defend, indemnify and hold harmless the Authority, its Affiliates and their respective successors, assigns, officers, directors and employees (collectively, "Indemnified parties") from and against any and all claims, actions, damage, loss, liability, costs and expenses of any kind (including reasonable legal fees) (collectively, "Loss") for infringement of any third party's industrial or Intellectual Property Rights, or other similar proprietary rights based on any products, deliverables, materials and/or any services furnished to or obtained by the Indemnified parties or the use thereof by the Indemnified parties. The Supplier agrees to give the Authority prompt written notice of any threat, warning of notice of any such claim or action. The Supplier shall have the right to conduct the defence of any such claim or action and, consistent with the Authority's rights hereunder, all negotiations for its settlement; provided, however, the Authority may participate in such defence or negotiations to protect its interests.

14.5 If at any time an allegation of infringement of Intellectual Property Rights is made which relates to any Supplier supplied materials, the Supplier may at its own expense modify the Supplier supplied materials so as to avoid the infringement provided that any such modification does not affect the utility, functionality or performance of the affected Supplier supplied materials.

15. POLICIES

15.1 The Supplier shall ensure that all the Supplier Personnel comply with any applicable policies or procedures identified by the Authority to the Supplier from time to time which shall include, any health or safety requirements, building access, security policies relating to conduct of personnel admitted to premises occupied by the Authority or discharging the Authority's business, and insofar as the Supplier Personnel have access to computer equipment supplied by the Authority and/or to the Authority's computer networks, the Authority's internet and email and software policies which may be issued from time to time.

15.2 In so far as the Supplier has access to the Authority's computer equipment or is providing computer equipment to the Authority, the Supplier shall:

a) use best endeavours to establish and maintain safeguards against the destruction, loss, corruption, alteration or disclosure of the Authority's data and
information (including Confidential Information) in accordance with industry best practice;

b) use best endeavours to ensure that no Virus is coded or introduced into any supplied equipment and/or software and/or the Authority’s computer equipment and networks;

c) regularly check for Viruses in any supplied equipment and/or any supplied software; and

d) in the event that a Virus is found in such equipment and/or software, delete the Virus and assist the Authority (at no additional cost) in reducing the effects of the Virus and, to the extent that the Virus causes a loss of operational efficiency or a loss of data, assist the Authority to restore such loss.

15.3 In so far as the Supplier has access to the Authority’s computer equipment or is providing computer equipment to the Authority, the Supplier shall not, without the prior written agreement of the Authority, insert or allow the insertion into any supplied software of any code which would have the effect of disabling or otherwise shutting down all or any portion of the equipment. With respect to any disabling code that may be part of the supplied off-the-shelf software, the Supplier shall not (nor permit others to) invoke such disabling code at any time, including upon termination of this Agreement, without the Authority’s prior written consent.
16. ESCALATION AND DISPUTE RESOLUTION

16.1 In the event of any dispute between the Supplier and the Authority concerning any matter arising from or in connection with this Agreement, the Supplier and the Authority will use all reasonable endeavours to settle the matter in accordance with the escalation process set out below.

16.2 Any such dispute which has not been settled between the Authority Manager and the Supplier Manager within five (5) Business Days of the matter being raised by one party to the attention of the other party may be escalated for resolution by either party to the Second Level Dispute References so listed on the front sheet or their nominated deputies.

16.3 Notwithstanding the foregoing, nothing in this Agreement shall prevent either party taking action at law where it deems it is necessary to do so in order to protect its Intellectual Property Rights or Confidential Information. The escalation and dispute resolution processes described above shall not prevent a party from notifying the other party that it withdraws from the escalation or the dispute resolution process for any dispute and intends to commence court proceedings nor will it prevent a party from exercising its right to terminate this Agreement in accordance with the termination provisions contained in Clause 20.

16.4 Both parties will continue to perform their respective obligations under this Agreement pending the resolution of any dispute.

16.5 Mediation
Before resorting to legal proceedings, the parties agree to use their best efforts to negotiated in good faith and settle amicably any dispute that may arise out of or relating to this Agreement. If any such dispute cannot be settled through ordinary negotiations between the Representatives of the parties, the dispute shall be referred to the Chief Executive Officers of the parties who shall meet in order to attempt to resolve the dispute. The parties further agree that before resorting to litigation they will appoint a mediator (who will be accredited by the Centre for Effective Dispute Resolution ("CEDR") or hold an equivalent qualification which is acceptable to both parties) by mutual agreement or (failing mutual agreement) will apply to CEDR to appoint a mediator to assist in such negotiations. Both parties agree to co-operate fully with such a mediator, provide such assistance as is necessary to enable the mediator to discharge his duties and to bear equally between them the fees and expenses of the mediator.

17. INSURANCE

17.1 The Supplier shall maintain insurance as described in Clauses 17.2 and 17.3 below.

17.2 The Supplier shall maintain insurance on customary terms prevailing on the insurance market from time to time and with reputable insurers lawfully carrying on business in the United Kingdom for the following types of insurance:

a) professional indemnity;

b) public liability;

c) employers liability; and

d) product liability,

and for each type, in an amount not less than five million pounds sterling (£5,000,000) (and ten million pounds sterling (£10,000,000) in respect of property damage) for any one occurrence or series of occurrences arising out of one event for a period
beginning with the Commencement Date and ending six (6) years after the termination of this Agreement.
17.3 The terms and conditions of the insurance cover held by the Supplier shall not include any provision which would require the Supplier to discharge any liability before being entitled to recover from its insurers or any other provision which might adversely affect the right of any person to recover under the Third Parties (Rights Against Insurers) Act 1930.

17.4 On receipt of a written request by the Authority, the Supplier shall furnish the Authority with satisfactory evidence of its compliance with the provisions of this Clause 17.

18. LIMITATION OF LIABILITY

18.1 Subject to Clauses 8.6, 14.4, 18.2, 18.3, and 29.3:

a) each party's total liability to the other, in respect of each event or each series of connected events, whether arising in contract, tort (including negligence), misrepresentation (other than fraudulent misrepresentation), for breach of statutory duty or otherwise in respect of this Agreement, shall be limited to five million pounds sterling (£5,000,000); and

b) neither party shall be liable for any indirect or consequential loss.

18.2 Nothing in this Agreement under it shall be deemed to limit either party's liability in respect of:

a) damages arising from death or personal injury;

b) a breach of its obligations in relation to Confidential Information; or

c) otherwise to the extent that such limitation is not permitted by law.

18.3 The Supplier shall indemnify the Authority in respect of physical damage to the Authority's property, save that such indemnity shall be limited to ten million pounds sterling (£10,000,000), unless otherwise agreed between the parties in writing.

19. ENGAGEMENT OF ALTERNATIVE SUPPLIER

19.1 Without prejudice to the operation of Clause 20.1, where the Supplier fails to provide any part of the Goods and/or Services other than as a result of the negligence, omission or wilful default of the Authority or by operation of Clause 21 (Force Majeure), the Authority reserves the right to engage an alternative supplier to supply the Goods and/or Services not provided.

19.2 The Authority may, at its sole discretion invoice the Supplier the reasonable costs incurred of engaging such alternative supplier or set off such costs against any monies due to the Supplier by the Authority.

20. TERMINATION

20.1 This Agreement may be terminated by either party forthwith upon giving written notice to the other upon the occurrence of any of the following events:

a) if the other commits any material breach of this Agreement (which shall include any failure to comply with any material term or condition herein) and which (in the case of a breach capable of remedy) shall not have been remedied within thirty (30) days from receipt of written notice by the non defaulting party specifying the material breach in reasonable detail; and
b) if the other party ceases to carry on business, is declared insolvent, bankrupt, or enters into suspension of payments or makes any arrangement with its creditors, enters into liquidation whether compulsorily or voluntarily (except for the purpose of reconstruction or amalgamation) or has a receiver appointed over the whole or substantially the whole of its assets, or allows any execution to be levied over its goods, unless the insolvency, bankruptcy, liquidation, suspension of payments or receivership is lifted within thirty (30) days.

20.2 The Authority may terminate this Agreement for convenience at any time during the Term immediately by giving thirty (30) days written notice to the Supplier, provided that the Authority shall pay the Supplier for all Services reasonably incurred up to the date of termination and for all reasonable costs and expenses incurred by the Supplier by reason of such early termination provided that the Supplier shall use its best endeavours to mitigate such costs and expenses.

20.3 The Authority may terminate this Agreement at any time during the Term if there is a change of control in the Supplier or its parent company (and the Supplier shall notify the Authority promptly following any such occurrence), provided that the Authority shall only be permitted to exercise its rights pursuant to this Clause 20.3 for six (6) months after each such change of Control and shall not be permitted to exercise such rights where the Authority has agreed in advance in writing to the particular change of Control and such change of Control takes place as proposed.

20.4 Save as herein provided, termination pursuant to this Clause 20 shall be without prejudice to any other rights and remedies which the terminating party may have against the other under this Agreement or at Law in respect of any expense, loss or damage that it may incur or suffer as a result of the breach.

20.5 The Supplier shall ensure that all of the Authority's property is returned and, unless otherwise agreed in writing between the parties, all electronically stored Confidential Information is expunged immediately on expiration or termination of this Agreement.

21. **FORCE MAJEURE**

21.1 Neither party will be liable for any breach of this Agreement caused by matters beyond that party's reasonable control (not involving the Supplier's employees or the Supplier's permitted independent sub-contractors), provided however that the non-performing party is without fault in causing the breach or the breach could not have been prevented by reasonable precautions and the non-performing party continues to use its best efforts to recommence performance, whenever and to whatever extent possible and without delay.

21.2 Should an event of force majeure prevent or materially impair performance by a party of its obligations under this Agreement for a period of more than thirty (30) days, the other party shall be entitled, without prejudice to its other rights and remedies under this Agreement or at law, to terminate this Agreement by written notice to the other party without penalty or liability, save that the Supplier shall, where applicable, within thirty (30) days of such termination pay to the Authority an equitable refund of any prepaid Charges for any Goods which have not been delivered or for any period for which Services have not been performed, either due to the occurrence of the force majeure event or the resulting termination of this Agreement under this Clause.

22. **BUSINESS CONTINUITY PLANNING**

22.1 The Supplier shall for the duration of the Agreement and in accordance with industry best practice, maintain detailed and comprehensive contingency plans against events which could effect the ability of the Supplier to perform its obligations in accordance with this Agreement, including, without limit and where applicable, loss of production, loss of systems, loss of equipment, industrial relations problems with the Supplier's or the Supplier's subcontractors employees, failures in the supply chain, failure of
business carriers and the failure of the Supplier's or its supplier's equipment, computer systems or business systems.

22.2 The Supplier shall keep the plans under review and make such changes, from time to time, as shall be required in accordance with industry best practice. The Authority shall be entitled to review the plans at any time and, in its sole discretion, make suggested changes or amendments to the plans which the Supplier, acting reasonably shall consider and, after consultation and agreement with the Authority, put in place.

23. NOTICES

23.1 Any notices to be given hereunder shall be sufficiently served if left at or sent by registered post or recorded delivery to the address given on the front sheet of the party to be served and any notice so sent by post shall be deemed to have been duly served forty-eight (48) hours after the time of posting, and in proving service it shall be sufficient to prove that the envelope containing the notice was duly addressed to the party to be served in accordance with this Clause.

24. NO WAIVER

24.1 No waiver, forbearance or delay enforcing any of the provisions of this Agreement by either of the parties shall affect or prejudice the rights of such party under this Agreement, nor shall any waiver by either of the parties of any breach of this Agreement by the other party be deemed to constitute a waiver of any continuing or subsequent breach by that party.

25. INDEPENDENT CONTRACTOR

25.1 The Supplier is an independent contractor and nothing in this Agreement shall render it (or any of the Supplier Personnel) an agent or a partner of the Authority and the Supplier shall not (and shall procure that the Supplier Personnel shall not) hold itself out as such.

26. THIRD PARTIES

26.1 A person or entity who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

26.2 To the extent that this Agreement confers a benefit on any Affiliate of or other party associated with the Authority, that Affiliate or other associated party shall be entitled to enforce such benefit as if it were a party to this Agreement.

27. PUBLICITY

27.1 Neither party will advertise or publicly announce its involvement in this Agreement without the prior written consent of the other party.

27.2 Neither party shall (without the prior written consent of the other party) use the name or marks, refer to, or identify the other party or, in the case of the Supplier, any Affiliate, in publicity releases, promotional or marketing materials, announcements, customer listings, testimonials or advertising. Each party acknowledges that this Clause may be breached if, notwithstanding the fact that a code name may be used, the circumstances of facts contained in any such materials by implication identifies (or may identify) the other party. Where such consent is granted by the Authority, then such usage shall be in accordance with the Authority's attribution guidelines. Such consent may be withheld by the Authority in its absolute discretion.

28. SURVIVAL OF CLAUSES
28.1 Clauses 5 (Supplier's Obligations), 12 (Confidentiality), 17 (Insurance), 18 (Limitation of Liability), 27 (Publicity), 29 (Data Protection) and 30 (Freedom of Information Act) shall survive the termination of this Agreement.

29. DATA PROTECTION
29.1 The parties shall each comply with their respective obligations under the Data Protection Act 1998 (as amended or replaced from time to time) ("DPA"). Neither party shall do any act that puts the other party in breach of its obligations under the DPA and nothing in this Agreement shall be deemed to prevent any party from taking the steps it reasonably deems necessary to comply with the DPA.

29.2 Each party may use, store or otherwise process and may transfer or disclose any personal data provided by the other party, to any Affiliate or member of their corporate group located in the European Economic Area, for the purpose of performing this contract and for relationship management purposes, and the other party agrees to inform its employees of the same. Neither party will pass any personal data to third parties outside their corporate group without prior notification to the data subject.

29.3 The Supplier, at its own expense, will defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, actions, damage, loss, liability, costs and expenses of any kind (including reasonable legal fees) for any claim by any third party arising out of any act or omission of the Supplier which causes any breach by the Indemnified Parties of any duties under the DPA.

30. FREEDOM OF INFORMATION
30.1 The Supplier acknowledges that the Authority is subject to FOIA and agrees to assist and cooperate with the Authority to enable the Authority to comply with its obligations under FOIA.

30.2 Without prejudice to the generality of Clause 30.1, the Supplier shall:

a) transfer to the Authority all Information Requests that it receives as soon as practicable and in any event within two (2) Business Days of receiving an Information Request; and

b) provide the Authority with information about or a copy of all Information that the Authority requests and such Information shall be provided within five (5) Business Days of a request from the Authority (or such other period as the Authority may reasonably specify), and in such form as the Authority may reasonably specify.

30.3 The Authority shall be responsible for determining whether Information is exempt information under the FOIA and for determining what Information will be disclosed in response to an Information Request in accordance with FOIA. The Supplier shall not respond directly to an Information Request unless expressly authorised to do so by the Authority.

30.4 The Supplier acknowledges that the Authority may be obliged under the FOIA to disclose Information without consulting or obtaining consent from the Supplier.

31. ENTIRE AGREEMENT
31.1 This Agreement contains the entire terms and conditions of the Agreement and supersedes all prior oral or written communications, agreements or understandings between the parties, save where a fraudulent representation has been made.

32. GOVERNING LAW AND JURISDICTION
32.1 This Agreement is governed by and construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.
APPENDIX 1. TO CONTRACT ..........................

EQUALITY AND DIVERSITY REQUIREMENTS

1. Compliance General

1.1 without limiting the generality of any other provision of the Contract, the Supplier acknowledges that in the operation of its employment programmes the IDENTITY & PASSPORT SERVICE (IPS) must at all times be seen to be actively promoting equality of opportunity for and good relations between all persons irrespective of their race, gender, disability, age, sexual orientation or religion.

1.2 The Supplier uses reasonable endeavours to procure that its sub-contractors assist and co-operate with IPS where possible in satisfying this duty, by fully complying with the requirements of APPENDIX 1.

2. Compliance

2.1 The Supplier acknowledges the provisions of clause ...... of this Contract.

3. Equality Policy

3.1 In the performance of the Contract and for the duration of this Contract, the Supplier

3.1.1 shall comply with the agreed Equality Policy

3.1.2 shall procure that each of its direct subcontractors adopt and implement an Equality and Diversity policy in respect of its employees engaged in the performance of the Contract which is at least extensive in scope as the agreed Equality Policy.

4. Monitoring and Reporting

4.1 Subject to paragraph 4.2 of this Appendix 1 the Supplier shall use reasonable endeavours to provide IPS on the date of this Contract and subsequently every 12 months (if applicable) from the date of the Contract with the following information.

4.1.1 the proportion of its employees and to the extent reasonably possible, the employees of its subcontractors engaged in the performance of the Contract who are:

(a) Female

(b) from an ethnic minority group, defined as any non-white ethnic group.

(c) disabled
4.1.2 The proportion of its subcontractors that are small/medium enterprises (SME) (meaning enterprises employing less than 250 people) and

4.1.3 The proportion of its subcontractors that are ethnic minority enterprises (meaning an enterprise 51% or more of which is owned by members of one or more ethnic minority groups or where there are few owners, where at least 50% of the owners are members of one or more ethnic minority group. For this purpose, the definition of ethnic minority group is the same that in clause 4.1.1 (b))

4.2 The Supplier shall ensure at all times that it complies with the requirements of the Data Protection Act 1998 (as may be amended) in the collection and reporting of the information to IPS pursuant to paragraph 4.1 of this Appendix 1
Appendix D
DWP A1
SCHEDULE 8

EQUALITY AND DIVERSITY REQUIREMENTS

1. General

1.1 The Provider acknowledges that in the operation of its employment programmes Jobcentre Plus must at all times be seen to be actively promoting equality of opportunity for and good relations between all persons irrespective of their race, gender, disability, age, sexual orientation or religion.

1.2 In the performance of the Contract, the Provider shall and shall use reasonable endeavours to procure that its subcontractors assist and cooperate with Jobcentre Plus where possible in satisfying this duty, by fully complying with the requirements of this Schedule 8.

2. Compliance

2.1 The Provider acknowledges the provisions of Clauses 3.3 and 3.4 of this Contract.

3. Harassment Policy

3.1 In the performance of the Contract and for the duration of this Contract, the Provider:

3.1.1 shall comply with the Agreed Harassment Policy.

3.1.2 shall procure that each of its direct subcontractors employed in the performance of the contract, adopt and implement an harassment policy in respect of its employees engaged in the performance of the Contract which is at least as extensive in scope as the Agreed Harassment Policy.

For the purposes of this Agreement the expression "Agreed Harassment Policy" means the Harassment policy set out in Annex 1 to this Schedule 8 to this Contract.

4. Equality Policy

4.1 In the performance of the Contract and for the duration of this Contract, the Provider:

4.1.1 shall comply with the Agreed Equality Policy.

4.1.2 shall procure that each of its direct subcontractors employed in the performance of the contract, adopt and implement an equality and diversity policy in respect of its employees engaged in the performance of the Contract which is at least as extensive in scope as the Agreed Equality Policy.

For the purposes of this Agreement the expression "Agreed Equality Policy" means the equality policy set out in Annex 2 to this Schedule 8 to this Contract.

5. Diversity Training

For the duration of this Contract the Provider shall comply with the Agreed Training Plan in relation to all of its employees engaged in the performance of the Contract.
For the purposes of this Contract the expression "Agreed Training Plan" means the diversity training plan set out in Annex 3 to this Schedule 8. The Provider shall procure that each of its direct subcontractors employed in the performance of the contract, adopt a similar diversity training plan in respect of subcontractor employees engaged in the performance of the Contract.

6. **Supplier Diversity**

In the performance of the Contract the Provider shall at all times comply with the Agreed Supplier Diversity Plan. For the purposes of this Contract the expression "Agreed Supplier Diversity Plan" means the supplier diversity plan set out in Annex 4 to this Schedule 8. The Provider shall procure that each of its direct subcontractors employed in the performance of the contract, adopt a similar supplier diversity plan in respect of subcontractor employees engaged in the performance of the Contract.

7. **Monitoring and Reporting**

7.1 Subject to paragraph 7.3 of this Schedule 8 the Provider shall use reasonable endeavours to provide Jobcentre Plus on the date of this Contract and subsequently every 12 months from the date of this Contract with the following information:

7.1.1 the proportion of its employees and to the extent reasonably possible, the employees of its subcontractors who are:

(a) female; and/or

(b) disabled.

7.1.2 the proportion of its employees and to the extent reasonably possible, the employees of its subcontractors who in terms of ethnicity are:

white

(a) white British;

(b) white Irish;

(c) of any other white background;

mixed

(d) white and black Caribbean;

(e) white and black African;

(f) white and Asian

(g) of any other mixed background;

Asian or Asian British

(h) Indian;

(i) Pakistani;

(j) Bangladeshi;

(k) of any other Asian background;
Black or Black British

(l) Carribean;

(m) African;

(n) of any other black background;

Chinese or other ethnic group

(o) Chinese;

(p) of any other ethnic group.

For the avoidance of doubt, the sixteen percentage figures submitted under categories (a) to (p) of this Paragraph 7.1.2 (in each case in respect of the Provider's employees and each subcontractor's employee) should total 100%.

7.1.3 the proportion of its subcontractors that are:

(a) small to medium sized enterprises, (meaning enterprises having less than 250 employees);

(b) ethnic minority enterprises (in each case meaning an enterprise 51% or more of which is owned by members of one or more ethnic minority groups, or, if there are few owners, where at least 50% of the owners are members of one or more ethnic minority groups. For this purpose, ethnic minority groups means ethnic groups other than white British as referred to at paragraph 7.1.2 above);

(c) black minority enterprises (in each case meaning an enterprise 51% or more of which is owned by members of the Black or Black British ethnic group, or, if there are few owners, where at least 50% of the owners are members of the Black British ethnic group. For this purpose, the Black or Black British ethnic group has the meaning referred to at paragraph 7.1.2 above).

For the avoidance of doubt, any given subcontractor may fall into one, two or all of the categories listed under this Paragraph 7.1.3, depending on its composition.

7.2 The Provider is referred to its additional reporting and compliance obligations under Schedule 9 (Accredited Provider Information), which include the requirement to report on Equality Issues as part of the overall Accredited Provider process operated on behalf of Jobcentre Plus.

7.3 The Provider shall ensure at all times that it complies with the requirements of the Data Protection Act 1998 (as may be amended) in the collection and reporting of the information to Jobcentre Plus pursuant to paragraph 7.1 of this Schedule 8.
ANNEX 1
AGREED HARRASSMENT POLICY

ANNEX 2
AGREED EQUALITY PLAN

ANNEX 3
AGREED DIVERSITY TRAINING PLAN

ANNEX 4
AGREED SUPPLIER DIVERSITY PLAN
PROCUREMENT & EQUALITY

Introduction

The Equality Act 2006 creates a duty on public authorities to promote equality of opportunity between women and men ("the gender duty"), and prohibit sex discrimination and harassment in the exercise of public functions. This is in addition to:

- the Race Relations (Amendment) Act 2000 which outlaws discrimination in all functions of public authorities and gives public authorities a positive legal duty ("the duty to promote race equality") to eliminate discrimination and to promote equality of opportunity and good race relations;

- the Employment Equality (Age) Regulations 2006 which makes it illegal to discriminate on grounds of age;

- the Disability Discrimination Act 2005 which introduced a positive duty to promote disability equality in the public sector. Public authorities have to anticipate disabled people’s access needs, and need to ensure that those to whom they delegate their responsibilities for instance through contracting take disability equality into account.

- the Sex Discrimination Act 1975 which makes it illegal to discriminate against women, men, married persons and those in civil partnerships.

Procurement is a function of the Department and individual procurers and are therefore, be relevant to the general duty to promote equality. However, the general duty does not override other laws or regulations on public procurement. For the purposes of this guidance the term ‘Equality’ or ‘Equality of Opportunity’ include gender, race and disability.

The Department has produced a framework of PREMIUM Guidance which provides guidance on what can and should be done at each stage in the procurement cycle in terms of applying equality of opportunity. The Commission for Racial Equality has also produced comprehensive guidance on applying race equality to procurements.

The duty placed on the Department under the Act is a positive one, requiring positive action to be taken. The guidance adopts that positive approach and suggests, in particular, that colleagues need to start from the presumption that equality is relevant. Those carrying out procurements should consider whether the specific circumstances of the procurement in hand invalidate that presumption, rather than working from the opposite direction.

Function of the Department

Where a function of the Department is carried out by an external supplier on its behalf, the Department remains responsible for meeting the duty. Contractors themselves must not discriminate, but they do not have the same legal obligation to promote equality of opportunity. This means the Department has to build relevant equality considerations into the procurement process, to ensure that the function which has been outsourced meets the requirements of all the applicable legislation.

Core Requirement

Equality must also be applied to procurements where it is a core requirement or is relevant to the procurement.

Equality is a core requirement when it is an essential part of the contract. For example, if the purpose of the contract is to provide services directly to the public, a supplier must be able to provide a service that meets everyone’s needs and treats men, women, girls and boys in the same way.

If equality is a core requirement or has relevance to a lesser degree, it must be reflected in the specification and conditions of the contract. It must be considered at each stage of the procurement process, and in your arrangements for managing the contract.

By applying ‘necessary’ and ‘appropriate’ tests, you should be able to proportionally define equality requirements that reflect the contracts relevance to promoting equality.

While equality is more likely to be relevant to contracts for services, you cannot assume that it will not be relevant to contracts for goods or works. It is important that you consider all aspects of a contract, to make sure you have not overlooked less obvious equality implications.
When is equality a core requirement in workforce matters?

You need to be confident that the supplier will provide a workforce that is capable of providing the goods, works, or services to the specified standards, including equality standards. This means their workforce should have enough people with the necessary skills and abilities, and that they should be highly motivated, suitably trained, supervised, and managed for the purpose of performing the contract. In workforce matters, equality of opportunity, quality, and value for money are inextricably linked. This has nothing to do with the ethnic or gender profile of a supplier’s workforce, but everything to do with the competence of the supplier as an employer, and how they treat their workforce.

In contracts where equality is a core requirement of the goods, works, and services, you need to ensure that the contractor can meet any particular requirements relating to equality. For example, there may be a requirement for the provider’s staff to know another language, or to be aware of the cultural or religious needs in a particular community, or of the needs of particular groups in relation to the services to be provided.

In contracts that are relevant to the duty to promote equality which is likely to include contracts for staff services you need to feel confident that the contractor’s staff will provide the service in ways that are consistent with your duty. To do so effectively needs a workplace where there is a commitment to equality. Therefore, you could require the contractor to promote equality of opportunity for their workforce engaged in the performance of the contract. For example, you could require them to follow the CRE’s code of practice for employment, to the extent necessary for effective performance of the contract.

You should make sure that any requirements you include are proportionate and relevant to the contract and to your legal obligations.

If a contract is to be carried out, at least partly, on your premises, or if the contractor’s employees will be working alongside your employees there or elsewhere, you could require the contractor to comply with your employment policies and codes of practice, particularly those concerned with equal opportunities. The contractor could meet this requirement by showing that their policy and codes provide equality protection equivalent to yours.

Contractors’ equal opportunities policies

As we are writing performance standards for delivering a service into a contract, you may be able to use our procurement function to promote equality by encouraging your contractors to draw up policies that will help them to avoid unlawful discrimination, and promote equal opportunities. This should only be on a voluntary basis and you should only discuss the question of a contractor adopting an equal opportunities policy (if they do not already have one) when the contract has been awarded.

For more information on Equality visit Fairway.

Procurement and Equality - A Framework of Practical Guidance

<table>
<thead>
<tr>
<th>STAGE 1</th>
<th>IDENTIFYING NEED &amp; SUPPORTING BUSINESS CASE</th>
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<tbody>
<tr>
<td></td>
<td>Given the increasing diversity of the UK population it will often be relevant to consider equality issues when procuring services, goods and works. Legislation places and statutory duty on all public bodies to promote equality in the way they carry out all their functions. You will need to consider how the procurement activity you are contemplating is affected by this duty.</td>
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It is at this early stage that the potential extent of any equality issues should be assessed for relevance. This initial assessment will need to address issues such as:

- Risks that would arise for the success of the procurement if equality issues are not covered (taking account of the statutory duty as well as any additional policy aims);
- Potential costs/benefits associated with each of these risks;
- Impact on quality.

<table>
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<tr>
<th>STAGE 2</th>
<th>DEVELOPING THE PROCUREMENT STRATEGY</th>
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<tbody>
<tr>
<td>Step 1: Use this stage to clarify the overall equality dimension in relation to the specific procurement exercise</td>
<td>The steps below set out the process for ensuring at the outset that equality is considered as part of the procurement activity.</td>
</tr>
<tr>
<td>Check that an Equality Impact Assessment has been done for the relevant policy.</td>
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Appendices – DCSF A1
Examine what priorities and commitments have been set in the Department's Race, Disability and Gender Equality Schemes and check that appropriate actions are in place/necessary changes have been made.

Ensure statutory obligations such as compliance with the RRA as well as any additional policies in Department’s Equality Schemes are integrated into the process.

Consider how supplier diversity can be promoted in each procurement exercise.

Consider consulting potential suppliers or advisors in order to explore ways of meeting the equality obligations, within the context of EU procurement legislation and without giving advantage to any potential supplier. This can be particularly helpful if you are considering major long-term contracts or if you know that suppliers have particular knowledge of the communities you are serving.

Have you used all available sources of information in your planning process, including people who will ultimately use the service?

<table>
<thead>
<tr>
<th>Step 2: Examine the equality duty in relation to procurement activity</th>
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<tbody>
<tr>
<td>Consider what is being procured and whether the Equality Duty is relevant</td>
</tr>
<tr>
<td>You should assume that procurement in equality is relevant in a procurement exercise unless you can demonstrate that it is neither a core nor relevant requirement.</td>
</tr>
<tr>
<td>If equality is a core requirement, then the &quot;duty&quot; will apply. A core requirement is something which you have determined the contractor must meet in order to provide effective and efficient goods, services or works. For example, if you are asking a supplier to provide services to the public, then everyone's needs should be met. If it is considered to be relevant you should remember to reflect this in the specification. Check further on determining &quot;relevance&quot;, for example, check the Department's core functions as set out in its Equality Schemes and examine whether the procurement activity involves the provision of a public service; if yes this is likely to be subject to the &quot;duty to promote&quot; equality.</td>
</tr>
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Other indicators which can help you answer the question of relevance are:

- If you are procuring a service contract which requires the supplier to engage directly with the public, then this is likely to have equality as a core requirement.
- Does the procurement involve services like catering where the service provided involves interaction with the public as well as staff? If yes then equality is also likely to be relevant.
- Services provided to staff such as training, welfare support; occupational health services are also likely to have relevance.
- Ensure that goods being purchased are 'fit for purpose'. To be fit for purpose goods should be capable of meeting the needs of diverse groups and be culturally sensitive. Some...
Check whether equality is relevant in the procurement of works/construction projects. You can usually tell if the resultant works will be utilised by members of the public and staff - e.g. hospitals, schools and government offices.

**STAGE 3**

**SPECIFICATION**

If equality is core or relevant to the proposed requirement you should reflect this in the specification being drawn up. This is critical to the whole process as it enables the appropriate equality issues to be taken into account at each of the subsequent stages of the procurement.

- Check that any equality issues are explicit in the specification and in any appropriate advertising.
- Make sure that any equality requirements are objective, clear and explicit.
- Try to frame your requirements in terms of outcomes you want rather than inputs; for example seek to describe the type of service you want delivered rather than the amount of staff resources you expect the supplier to devote to it. This is because lack of clarity in the specification might mean that the Department could not comply with its duty to promote.

- Draft specific equality criteria. This must be consistent with value for money - i.e. quality and whole life cost and legislative requirements.
- Where relevant ensure that you specifically address the needs of everyone in the specification.

Consider whether the examples provided below might be ones you wish to consider when drawing up your specification:

- Tenderers supplying evidence that their staff have been trained and can demonstrate their ability to carry out their duties in under equality requirements.
- Suppliers demonstrating an appreciation of the cultural and diverse needs of the service users.
- Suppliers demonstrating and developing a range of services which will reflect the diverse needs of clients across different geographical areas.
- When procuring catering services it will be appropriate to specify that the range of food provided will meet the needs of a diverse customer base.
- Asking for information which will describe the specific monitoring
practice that will be followed to ensure that equality is included in the delivery of services.

- Asking how suppliers ensure that their staff have skills in dealing with equality complaints/conflict.

- Asking contractors to ensure where relevant that there are sufficient instructed and competent staff to provide services to all sections of the community, including those who do not speak English.

- Ensuring accessibility for disabled people where appropriate.

- Suppliers demonstrate that they treat all staff equally regardless of gender.

### STAGE 4: IDENTIFYING SUPPLIERS

**Step 1: Pre-Qualification and Pre-Tender Gathering**

Once you have established the nature of the requirement and the relevance of equality issues to it, there are several action points you should take into account:

- Check that your pre-qualification activity meets the equality duty.

- Check if a potential supplier has a record of unlawful discrimination; this can be grounds for exclusion if related to convictions or grave professional misconduct.

- Seek information about potential suppliers track record on similar contracts with regard to equality.

- Check that potential suppliers are prepared to provide specific evidence of policies on equality, e.g., recruitment.

- Seek to ensure that primary contractors have systems to ensure equality duty will be implemented by sub contractors. Sub-contractors will be subject to the same set of conditions as the primary supplier when equality is relevant to the service etc being procured.

| Step 2: Drawing up Short-List of Tenderers | The number of suppliers short-listed for tendering will depend on the nature of the procurement. In general 5-8 organisations tend to be invited to submit formal tenders. The costs incurred by potential suppliers in tendering for public sector contracts are considerable and it is good practice to keep the short-list down to the minimum consistent with obtaining tenders that will provide the best way of meeting the requirement in the light of pre-qualification and pre-tender evaluation. It is not good practice to expand the tender lists to include a few token SME/BME suppliers unless they have as good a chance of winning the work as any other potential supplier. |

### STAGE 5: INVITATION TO TENDER, SELECTION AND AWARD

**Step 1: Issuing the Invitation to Tender**

In setting out the requirement in your invitation to tender documentation you should make clear that you expect equality issues to be addressed:
Step 2: Selection

Issues and questions to be considered at the selection stage include:

- Have you included a reference to the Department’s Equality Schemes (if relevant) in the documentation you provide to your suppliers? For example, if the RES requires monitoring for any adverse impact on the promotion of race equality, is this included in the contract conditions?

- Have you made it clear in the criteria against which you will be evaluating tenders where equality is a requirement?

Step 3: Contract Award

Ensure that criteria for evaluation are objectively applied. You should note that within the overall definition of Value for Money, the following criteria are important:

Quality

Equality issues can be included when considering the quality of the service and goods being procured if equality is core or relevant and is non-discriminatory in relation to EU rules. The emphasis given to equality issues must be proportionate to the significance of the equality requirements as a whole.

Compliance

Consider whether the specification is met in full including race equality requirements and that the tenderers have indicated...
acceptance of an equality contract conditions.

When drafting the contract consider the following:

- Have you checked that the contract clauses include provisions for dealing with compliance with legislation, specific equality requirements and the process/systems for contract monitoring/performance management?

- Ensure that the contractor's responsibilities in relation to the legislation are explicit in the terms and conditions of the contract; for example where you are contracting out a public service and the equality duty applies to the functions included in that service. Check that the Department's obligations are passed on to the contractor and any subsequent sub-contractors in a similar position.

- Are results of contract monitoring, consultation or other assessments to be included in the contractual conditions?

- Do your conditions make clear that you expect suppliers to deliver the contract in accordance with any method statements they may have submitted and which formed part of your evaluation (which will have covered the equality dimension of what you are procuring)?

- Have you set out how non-compliance with equality contractual requirements will be addressed and in the most serious cases at what point would it constitute a breach of contract.

- Have you set out the information that you will require in order to assess compliance with the contract?

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**Step 4: Feedback**

Have you given feedback on:

- Any poor practice or incidents of unlawful discrimination that have emerged and why they have contributed to the decision on the supplier's proposal?

- Any shortfalls on meeting the equality requirements in the specification?

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**STAGE 6 CONTRACT MANAGEMENT**

**Step 2: Contract Management and Monitoring**

- Ensure that, where you are contracting out a function of the Department you include systems on monitoring and evaluation, particularly in relation to post-award performance.

- Ensure that systems for monitoring are specified at the outset of the process and that the contractor has understood exactly how to meet the requirement.

- Examine whether you need to give examples of equality monitoring reports and explain why
you have asked for the information.

- Check whether monitoring needs to address both process issues, e.g., training in equality for suppliers' staff, and delivery of contract outcomes/products.

- Are you getting regular information either in written form and/or via site visits from suppliers about compliance with the contract specification, including equality?

- Consider whether it would be advantageous to the Department and to the performance of the contract to discuss with successful contractors other voluntary steps they might take to further equality or dept. objectives.

**MODEL CLAUSES**

**Possible Contract Clauses**

- The contractor shall at all times provide the service in accordance with the Department's commitment to equal opportunities to all sections of the community including the obligations placed on public bodies by the Equality Act 2006, the Disability Discrimination Act 2005, the Employment Equality (Age) Regulations, the Race Relations Amendment Act 2000 and the Sex Discrimination Act 1975.

- The contractor shall establish adequate managerial and supervisory arrangements for staff to be made aware of and to comply with discrimination legislation and the equality specifications within this contract.

- The contractor shall ensure that sufficient, instructed and competent staff are available to provide services to all sections of the community including those who do not speak English.

- Catering: the contractor should ensure that the produce can meet the requirements of a diverse community.

- The contractor shall support and co-operate with Department initiatives aimed at improving services (and/or access to services) to different groups in the community.

- The contractor shall provide any information regarding the delivery of its services to ensure the Department meets its statutory obligations.
References


Treaty of Rome (1957). Available at http://www.hri.org/docs/Rome57/Part3Title01.html

