



Lambeth

# Responsible Procurement at Lambeth

Adding sustainability  
& social value to the  
products and  
services we buy

March 2013

The London Borough of Lambeth  
Corporate Procurement Team



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# Responsible Procurement

Sustainable procurement practice at Lambeth is guided by the Responsible Procurement policy. Another name for sustainable procurement, the principles of Responsible Procurement require procurement officers to consider the economic, environmental and social aspects of the purchases they make and the contracts they place.

Other commonly used terms have included “corporate social responsibility” “green supply chain” or the more popular “sustainable procurement” - which has probably been most widely used in the last few years but even that term was often confusing. Responsible Procurement is different from sustainable procurement in that it incorporates the ethical, people and social side of procurement – and includes regeneration, business development and local SME issues; otherwise the content of the principle of responsible or sustainable procurement has not really changed. The term Responsible Procurement carries the common understanding that procurement should still be 'green' but the emphasis has shifted towards social considerations; Responsible Procurement now encompasses the belief that identifying each strand of the sustainable development agenda is of importance.

## The Public Services (Social Value) Act 2012

The Public Services (Social Value) Act 2012 (the Act) received Royal Assent on 8 March 2012. It was brought into force by commencement order on 31 January 2013. From that date the operative provisions of the Act will apply and Lambeth procurement and commissioning officers must follow the Act and take it into account when undertaking procurement or commissioning projects.

### Introduction to the Act

The Act places a requirement on procurement and commissioning officers to consider the environmental and social benefits of their approaches to procurement before the process starts. Officers also have to consider whether they should consult on these issues.

The Act specifically applies to the Gateway One and Two stages of the Lambeth procurement process. The planning and strategy development of the procurement of services stages is where social value can be considered to greatest effect. Officers should consider social value before the procurement starts because that can inform the whole shape of the procurement approach and the design of the services required; they can also use the Act to re-think outcomes and the types of services to commission before starting the procurement process.

*In tight economic times it is particularly important that maximum value in public spending is achieved. Demand for core public services will increase significantly over the next few years in a time of reduced funding. Procurement and commissioning officers will need to identify better targeted, more innovative and radical service delivery solutions to meet this demand. We all have to work hard to not only achieve the best price but to also meet the wider social, economic and environmental needs of the Lambeth community*

Lambeth procurement and commissioning officers need to continue taking a value for money approach - not lowest cost - when specifying and evaluating contracts, where relevant, and the Act complements this approach. You can read the full text of the Public Services (Social Value) Act online here: <http://www.legislation.gov.uk/ukpga/2012/3/enacted>.

### **The Social Value Act & Responsible Procurement**

At Lambeth the principles of the Social Value Act are included within the wider Responsible Procurement initiative already observed in the Lambeth procurement process. The Social Value Act is concerned only with social benefits that can be attained through delivery of services; Responsible Procurement supports this as well as considering benefits that can be achieved in the purchase of products. Some of these social benefits will be benefits to the local community and the tool supported by Lambeth procurement to discover these is the Community Benefits Checklist. The Checklist is used together by procurement officers and their department's Cabinet Member. Both use the form to agree the benefits opportunities in a contract, at the procurement planning stage.

### **What Do We Have To Do Under The Act?**

The Act requires commissioners and procurers at the pre-procurement stage to consider how what is to be procured may improve social, environmental and economic well being of the relevant area. We need to consider how we might secure any such improvement and to consider the need to consult. The Act will only apply to public services contracts and framework agreements to which the Public Contracts Regulations 2006 apply.

When considering how a procurement process might improve the social, economic or environmental well being of a relevant area, officers must only consider matters which are relevant to what is proposed to be procured. We must also only consider those matters to the extent to which it is proportionate, in all the circumstances, to take those matters into account.

At Lambeth the Social Value Act must be considered for all purchases and contracts but no formal specification or reporting action is required where the aggregate value is below £25,000. For purchases and contracts valued at £25,000 and greater (the Lambeth tendering threshold) details of how social value will be obtained must be included:

- In the Gateways One and Two reports when officers seek approval to go to tender
- In the Community Benefits Checklist that is completed at Gateway Two when the value of the contract is at £100,000 and greater
- In the Gateway Three report that recommends contract award. Details of the benefits the winning supplier has offered to the Council must be included in the report
- In the Gateway Four forms and ongoing contract performance reviews, where contract managers monitor the supplier's delivery of their proposed social benefits

Where a purchase is made or a contract put in place under an urgent or emergency waiver, the Act makes provision to discard the need to consider consultation and the impact on

social, environmental and economic well being of service users - if it is impractical to consider them. However, urgency caused by undue delay will not be a valid reason not to comply with the Act's requirements.

Under law the Act only applies to those public services contracts and framework agreements to which the Public Contracts Regulations apply and only for contracts valued at the OJEU thresholds and greater. **However, Lambeth has extended this responsibility to the tendering threshold of £25,000.** At this value of contract procurement and commissioning officers and managers must, as a matter of good practice, consider how what it is proposed to be procured might improve economic, social and environmental well being in order to obtain maximum value for money and for local authorities to comply with the best value duty.

**Technical Questions & Answers**

Below are a set of Technical Questions and Answers designed to provide more information about the Social Value Act and what procurement and commissioning officers need to do to consider the environmental and social benefits of their procurement and commissioning activities:

**a. Does the Act apply to Part B Services Contracts and below threshold contracts?**

The Act will apply to services that fall under Part B of Schedule 3 of the Public Contracts Regulations 2006 as well as those that fall under Part A.

**b. How does the Act apply to Framework Agreements?**

The Act will apply to framework agreements. When procuring framework agreement for public services that is at or greater than the OJEU threshold, procurers and commissioners must consider the provision of the Act. **The Act does not apply to services contracts awarded by calling off from a framework.**

**c. What contracts are not covered by the Act?**

The following contracts are not covered by the Act:

- Contracts for goods and works
- Contracts where there is a mixture of services, goods or works are not covered where the value of the goods exceeds the value of the services or where the works are more than incidental to the main purpose of the contract.

*The Act does not define how the results of the consideration of these impacts and feedback from any accompanying consultation should shape any procurement which is undertaken. However, it does enable officers and end users a perspective on potential services to be taken into account in the development of outcomes and specifications for the services to be procured. Cooperative commissioning is underpinned by the principle of procuring for outcomes and officers need to get better results for less money: specifications that are developed with the consideration of the Act's principles can lead to more innovative and cost effective solutions*

- Call-offs from framework agreements
- Contracts that fall outside the scope of the Public Contracts Regulations 2006 (such as those for certain defence and security services) are not covered

Although these contracts are not covered under the Act commissioners, as a matter of good practice, should consider economic, social and environmental well being in order to obtain maximum value for money.

**d. What is the planning stage of a procurement or commissioning project?**

This is the Gateways One and Two milestones in Lambeth's procurement process. At this stage of the procurement or commissioning process services are conceived, designed and specifications are developed. Engagement with partners, stakeholders and current and potential providers takes place; at the Gateway Two stage officers are required to consult with their departmental Cabinet Member and complete the Community Benefits Checklist to identify social value and community opportunities in the proposed tender.

This period ends when the Gateways One and/or Two reports are submitted to the relevant Procurement Board and after peer review of the report(s) content, approval is given to advertise the tender or to approve the waiver.

**e. What has to be considered in the planning stage of a procurement or commissioning project?**

The Act requires authorities to make the following considerations at the planning stages: how what is proposed to be procured might improve the economic, social and environmental well-being of the "relevant area" how in conducting a procurement process it might act with a view to securing that improvement whether to undertake a consultation on these matters.

**f. What is the definition of public services contract?**

The definition of "public services contract" in the Act is the same as the definition in the Public Contracts Regulations 2006. The tests for mixed contracts are therefore the same as in the Public Contracts Regulations 2006. Mixed contracts for goods and service will only be covered if the value attributable to the services exceeds the value of the goods covered by the contract. Mixed contracts for works and services will only be covered if the works are only incidental to the main purpose of the contract.

**g. What is the relevant area?**

The Act defines "relevant area" as being the area in which the authority (or authorities) primarily exercise their functions within the United Kingdom. For example, a local authority thinking of letting a contract for its own use would have to make considerations for its own geographical area, even if the contract is only directly relevant to part of the local authority's area. A local authority procuring a framework agreement for use by itself

and neighbouring authorities would have to consider that wider area, even if the framework agreement is only likely to be directly relevant to part of that wider area. Authorities whose functions extend throughout the UK would have to consider the area of the UK, even if the contract or framework agreement is only directly relevant to a part of the UK. Areas outside the UK do not have to be considered even if an authority has functions outside the UK.

*At the Gateway Two strategy stage officers are required to consult with their departmental Cabinet Member and complete the Community Benefits Checklist to identify social value and community opportunities in the proposed tender*

Although the Act requires considerations to be made in respect of the “relevant area” contracting authorities should be careful to ensure that suppliers from across the EU and beyond are able to compete on an equal footing for any contracts advertised. In line with the EU Procurement Directives, EU Treaty principles and the UK’s international obligations contracting authorities should not do anything to discriminate against suppliers from other member states or countries who are party to the World Trade Organisation’s Government Procurement Agreement.

**h. Who should be consulted and how should it be done?**

The Act does not set out who should be consulted in the pre-procurement period. Cabinet Office procurement advice on lean sourcing already emphasises the importance of consulting with supply markets before formal procurements begin so the requirements of the Act are complimentary to the principle of consulting before procurements start to develop robust and intelligent specifications. Potential service users and organisations that represent them in the community should be consulted as well as other agencies that provide or commission services.

Consultation will be particularly relevant when considering procurements for services which are delivered directly to citizens. The voluntary and community sector, along with other providers and interested groups, should be engaged from the earliest stage to help shape policies, programmes and services. Consultation may be less relevant in procurements for “back office” services such as those for information technology or human resources where services are supplied directly to the contracting authority.

The Act does not set out how consultation should take place so commissioners should consider the most appropriate form of consultation bearing in mind the needs and requirements of people and organisations being consulted, the size of the procurement and the likely social, environmental and economic impact of the procurement.

**i. How should contracting authorities apply the results of considerations and consultations to the procurement process?**

The Act does not apply to any formal stages of the procurement process but it does require commissioners to consider social value issues and how they can be applied to the outcomes required. This in turn will inform the development of the specification and



the assessment of bids. Officers must engage with supply markets before procurement processes commence and the requirements of the Act complement this approach. This type of engagement has two benefits:

1. It enables the views of potential service users, potential suppliers and other stakeholders to be taken into account when designing the specification for the service to be procured. This can lead to more innovative solutions which take into account wider economic, environmental and social concerns
2. It alerts the potential supply base to forthcoming procurements. If this is done early in the process it enables the supply base to prepare to meet demand and can enable smaller organisations or those from the charitable or voluntary sectors to form a consortium or enter into other commercial arrangements to bid for contracts

**j. What bodies does the Act apply to?**

The Act applies to those bodies that are defined as contracting authorities under the Public Contracts Regulations 2006, except that it does not apply to Welsh Ministers, the First Minister of Wales, the Counsel General to the Welsh Assembly Government, the National Assembly for Wales Commission or any other authority whose functions are wholly or mainly Welsh devolved functions.

**k. How can contracting authorities demonstrate that the Act has been considered?**

Although the Act does not prescribe that considerations made under it should be recorded by way of a specific report or form, at Lambeth records of social value will be included in the Gateway documents, advertisements (if relevant) and all relevant tender documents. These will show that we have made the considerations required under the Act, as well as the rationale for any subsequent decisions.

Contract managers have the responsibility to report on the delivery of the social value elements of all contracts, once they have been awarded and implemented. Records for delivery will be recorded in the Contract Performance Review Reports.

**l. How does the Act relate to Local Authorities' Best Value duty?**

The Local Government Act of 1999 sets out a general Duty of Best Value for specified local government organisations to "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness."

Under the Duty of Best Value local authorities should consider overall value, including economic, environmental and social value, when reviewing service provision.

Communities and Local Government publish statutory guidance on the duty at Best Value Duty. Local authority commissioners should note that the Best Value Duty complements



the approach in the Act but there are some differences which are summarised in the table below:

	<b>Responsible Procurement &amp; Best Value Duty</b>	<b>Public Service (Social Value) Act</b>
The Responsibility	Consider value, including social value	Consider how to improve social, economic and environmental wellbeing
Procuring or Commissioning Body	Local Authorities	All UK Public Sector Authorities
Contract	Services, goods and works	Services only
Procurement Stage	Throughout the process	The planning stages of procurement
Value of Contract	Any value	The Act states only above relevant EU procurement thresholds but at Lambeth the threshold is any value
Consultation	Yes, with service users	Yes, on the service being provided

## Scope & Risk in Responsible Procurement

Responsible Procurement is a developing subject, but its scope is generally captured by the following headings; these are also known as the “triple bottom line”:

- **Social**
- **Economic**
- **Environmental**

Each of these headings contains many sub divisions. The importance of each is dependant on each organisation, the issues it faces and what it wants to achieve. Not taking action on Responsible Procurement exposes organisations to risk:

- **Performance (social, economic, environmental)**
- **Reputation**
- **Efficiency**

In the tender process officers need to consider and evaluate elements of all three headings and the role of the Procurement Boards is to offer some challenge and advice. Specialist advice is available in the Procurement Guide, the Corporate Procurement Team and departmental procurement teams.

## The Triple Bottom Line

### Social Sustainability Risks

#### Includes:

- Employment conditions – levels of pay, including minimum acceptable levels of pay, London Living Wage, working hours, freedom of association, use of bonded labour or child labour, protection of harassment, written contracts of employment. All suppliers should comply with their local law in respect of employment and this should be a contractual requirement.
- Health and Safety – use of standards and policies affecting health and safety in the work environment, safety at work, the training and protection of employees, the health and well being of customers or other stakeholders.
- Discrimination – equality, absence of bias in terms of age, religious belief, sex, sexual orientation, gender, race or disability, Hate Crime Act 1998.
- Skills and Training or “the skills agenda”. Includes literacy, language and numeracy as well as pursuit of apprenticeships, secondments and on the job training.
- Local community policies around worklessness. These must not discriminate against another EU member state or the free movement of goods or services.

## Economic Sustainability Risks

### Includes:

- Value for Money considerations, whole life cost models and fitness for purpose.
- Ethical practices – personal conduct, conflict of interests, disclosure of sensitive or commercial confidential information, misrepresentation, payment of incentives or inducements, giving or receipt of gifts or hospitality. Been convicted of a criminal offence concerning professional conduct or been guilty of grave professional misconduct proven by any means we can reasonably demonstrate. This must be proportionate; suppliers should be given opportunity to describe steps taken to prevent re-occurrence.
- Legal compliance – the law, fulfilling contractual obligations. Suppliers should be given opportunity to describe steps taken to prevent re-occurrence.
- Abuse of power – dominance of relationships, potential distortion of the market or competition. This should be in compliance with anti-competition laws.
- Competitiveness – collusion, cartels and monopolies, diminution of free / fair competition, free access to markets, compliance with anti-collusion requirements in the Invitation to Tender.
- Economic development – benefits of local spending and wealth generation, equality of opportunity – allowing local markets to do business with government authorities without discriminating against other EU member states or with the free movement of goods and services.
- Supplier Diversity – actions affecting diversity in the market, explicit or implicit bias against particular types or size of enterprise – for example Social Enterprises, Small to Medium Enterprises (SME's) or Minority Owned Businesses – without discriminating against other EU member states or with the free movement of goods and services.
- Fair dealing – responsible behaviour, meeting obligations e.g. payment terms.

## Environmental Sustainability Risks

### Includes:

- Environmental impact – CO2, other emissions (including noise and light) waste products, energy use, the impact of DNA modified species on the natural environment, loss of natural habitat or eco-systems.
- Use of scarce natural resources, including fossil fuels and water.
- Use or production of dangerous or hazardous substances.
- Depletion of resources e.g. chemicals derived from oil, resources that are used faster than the natural process of replenishment (e.g. fish stocks in the North Sea, or tropical deforestation).
- Diversity – bio diversity, the depletion of species either directly or through loss of habitat
- Animal Welfare – treatment, transportation and use of animals, DNA modification, animal testing. Animal welfare is less commonly referred to but is a consideration.

**Those underlined have been given special priority by the UK Government. All above should be aimed at the protection of the environment and prudent use of natural resources.**

### **Key Targets & Drivers**

- The UK Sustainable Strategy sets the goal of the UK becoming a leader within the EU on sustainable procurement.
- The local government sustainable procurement action plan sets out how the sector will rise to the challenge.
- The CAA includes sustainability performance indicators.

### **Next Steps**

The Corporate Procurement Team is introducing a number of initiatives to the Council in the coming months:

- A new Procurement Guide with an expanded section on Responsible Procurement
- An e training course on sustainable procurement – this is a customised output from the LCE Sustainability project and is 1 hour in length
- A Member Briefing on Responsible Procurement using E+
- Amendments to the Procurement Officer Delegated Decision Report to expand Responsible Procurement considerations and whole life costing

Our aim is to make sustainable procurement part of “business as usual” at Lambeth and not a “special project” - and definitely not an afterthought!

All the best,



Stephen Regalado  
Corporate Procurement Officer: Customer Engagement

# The Lambeth Sustainable Procurement Policy Statement

Procurement at Lambeth is committed to the achievement of Value for Money, standards of excellence and Best Practice in the procurement of supplies, services and works which help deliver the Council's key corporate objectives. We believe in procurement practices that balance the needs of the economy, the environment and society. We are committed to identifying and reducing, on a cost-effective basis, the sustainable risk associated with the goods and services we buy. Our procurement activity will reflect best sustainability practice and we will implement a programme of measures designed to improve our sustainable procurement capability – identifying and addressing areas of high risk and impact. In particular, we will:

- Comply with all relevant sustainability regulation and other requirements
- Undertake a programme of training for procurement staff
- Raise awareness of sustainable procurement across the Council through specific training, information and publicity
- Review our procurement activity to identify sustainability risks and impacts, prioritise these and develop measures to address them
- Develop action plans to improve our capability against which we will monitor and review progress
- Ensure that our suppliers and contractors are encouraged to reduce the sustainable impact of the goods and services they provide

# Responsible Procurement at Lambeth

Sustainable development for Lambeth is about creating a better quality of life for all areas of the Borough – for both now and in the future. It is underpinned by three key principles:

1. Strong and diverse economic growth
2. Social inclusivity to allow all Lambeth residents to share the Borough's future success
3. Fundamental improvements in environmental management and use of resources

Though procurement at Lambeth has always worked towards the adoption of sustainable development practices, the term “sustainable procurement” has now moved on. Once known as “green procurement”, “ethical procurement” and finally “sustainable procurement”, Lambeth has joined with the Greater London Authority and the Scottish Parliament in adopting the term “Responsible Procurement”. The difference between the terms “Responsible Procurement” and “sustainable procurement” is not great – but Responsible Procurement is more inclusive of the social and economic aspects of sustainable development, alongside the well known “green” or environmental issues; the primary aspects of Responsible Procurement at Lambeth are in the are represented in the following three broad categories:

1. Social
2. Economic
3. Environmental

All three principles together make up Responsible Procurement at Lambeth and they all carry equal weight and consideration.

## Corporate Policies

Lambeth has a number of policies that reflect our commitment to Responsible Procurement and corporate social responsibility. These can be found at [www.lambeth.gov.uk](http://www.lambeth.gov.uk) but links to relevant individual policies are below:

### Lambeth's Sustainability Charter

<http://www.lambeth.gov.uk/Services/CouncilDemocracy/MakingADifference/LambethSustainabilityCharter2007.htm>

### Sustainable Development & Construction Policy

<http://www.lambeth.gov.uk/Services/HousingPlanning/Planning/SustainableDevelopmentConstruction.htm>

### Sustainable Timber Purchasing Procedure

<http://www.lambeth.gov.uk/Services/HousingPlanning/Planning/SustainableTimberPurchasing.htm>

**Equal Opportunities Statement**

<http://www.lambeth.gov.uk/NR/exeres/A837D1E5-5641-4DCD-9D90-BCB572CD87A0.htm#equal>

**Corporate Health and Safety Policy**

<http://www.lambeth.gov.uk/Services/Business/HealthSafety/HealthandSafetyEnforcementPolicy.htm>

**Privacy Policy**

<http://www.lambeth.gov.uk/Privacy.htm>

**Corporate Complaints Policy**

<http://www.lambeth.gov.uk/Services/CouncilDemocracy/CommentsComplaints/CorporateComplaintsPolicy.htm>

**Freedom of Information Policy**

[http://www.lambeth.gov.uk/Services/CouncilDemocracy/DataProtectionFOI/index\\_EXTRA.htm](http://www.lambeth.gov.uk/Services/CouncilDemocracy/DataProtectionFOI/index_EXTRA.htm)

**Whistleblowing Charter**

<http://www.lambeth.gov.uk/Services/Business/TendersContracts/WhistleBlowingCharter.htm>

**Lambeth Hate Crime Strategy**

<http://www.lambeth.gov.uk/SaferLambeth/HateCrime>

**Crime & Disorder Act 1998, Section 17**

<http://www.crimereduction.gov.uk/legislation26.htm>



## 1. Social

### a. Equalities & Human Rights

The Equality Act 2010 contains a specific measure on procurement, making provision: “to enable duties to be imposed in relation to the exercise of public procurement functions”. The guidance document “Framework for a Fairer Future: The Equality Bill”, states the Act: “makes it clear public bodies can use procurement to drive equality”. It also: enables ministers to set out how public bodies should go about doing so. The complete document can be found on SharePoint here:

<http://sharepoint.lambeth.gov.uk/sites/lts/corporateprocurement/Public%20documents/Equalities%20and%20Procurement/GEO%20-%20Framework%20for%20a%20Fairer%20Future.pdf>.

Public procurement is already inherently linked to existing public equality duties. However, the new legislation creates a more explicit connection between procurement and the new Single Equality Duty.

#### Rationale

The Act’s impact assessment explains the decision to include procurement was based on evidence. This showed that government intervention is necessary to encourage and enable public authorities to use their procurement activities to further equality objectives. The Act seeks to invoke a cultural shift in how public authorities pursue equality objectives through their procurement activities. It also notes that a common approach to equality in public procurement could reduce burdens on business applying for public sector contracts and make it easier for small and medium-sized businesses to compete.

#### Amendment to the Local Government Act 1988

Local authorities are explicitly permitted to take non-commercial matters into account during the procurement process, when they consider it is necessary or expedient to do so. This is in order to comply with the Single Equality Duty.

#### The Single Equality Duty

The Act establishes a new Single Equality Duty for public authorities. This consolidates the three existing public duties on race, disability and gender. Additionally, it covers age, sexual orientation, religion or belief, pregnancy and maternity and gender reassignment. The new duty, like the three duties before it, requires public authorities to have due regard to:

- Eliminate unlawful discrimination
- Advance equality of opportunity
- Foster good relations when exercising their functions

## **Specific Duties & Procurement**

- Clause 147 gives ministers the power to make regulations imposing specific duties on certain public authorities to enable them to carry out the new Equality Duty more effectively. The Equality and Human Rights Commission (EHRC) must be consulted before these are imposed.
- Clause 149 gives ministers a regulation making power to impose specific duties in relation to public procurement functions. These are defined as those activities that fall within the European law public procurement regime. Ministers do not have to consult with the Equalities & Human Rights Commission before imposing these procurement-specific duties.
- The explanatory notes give an example of how the power may be used. A minister could, for example, impose a specific duty requiring certain public authorities to take into account national priorities set out in a public service agreement (PSA) when setting their equality objectives.
- Crucially, the act also gives ministers the power to modify or remove any duties on procurement that have been imposed, including those by other ministers. There is no equivalent power under the general specific duties.

## **Procurement Guidance**

This section summarises the key legislation and principal concepts which you are most likely to encounter and find useful on a day to day basis.

- You should clarify your equality objectives and consult (including external providers and members of staff) to establish whether any issues exist and whether any race equality monitoring is done.
- You should consider whether equality objectives might be better met through different packaging or timescales.
- You must consider whether the duty to promote equality should be built into the contract. This might be on the basis of an EIA. You must also include equality of opportunity when evaluating a contractor's workforce capability.
- You should use the contract specification to set out what you expect from the contractor in terms of promoting equality. Consider issues concerning sex, disability, religion or belief, sexual orientation or age. Any requirements should be clear so that they can be verified and monitored. Use contract conditions to set out your requirements for the contractor's equality obligations.
- If there are equalities issues linked to the area of procurement, these should be mentioned in any advertisement. Part of the pre-qualification questionnaire relates to equality issues.

The points relating to pre-qualification questionnaires apply. The invitation to Tender should include information about the Council's:

- Equality policies
- How relevant these are to the procurement activity in question

- Facts about the Council's population distribution
- And any other relevant data from equalities monitoring activities

**Where equality is a core requirement, you must ensure that evaluation criteria directly cover this requirement; you should evaluate all statements made and evidence presented by the overall contract objectives.**

### **Procurement & The Human Rights Act 1998**

In the last few years there has been some confusion as to which bodies are subject to the Human Rights Act 1998. Bodies such as local authorities, health authorities and central government departments are obviously covered, but the Act also refers to other bodies (which could be privately-owned), carrying out "functions of a public nature" that are also subject to the Act. An example would be the secure transport company G4S. G4S is a private company but its transporting of prisoners is classed as a public function - this part of their business is therefore covered by the Human Rights Act. However, other parts of their business are not - for example delivering money to banks. These functions are not subject to the Act.

Unfortunately, a number of legal judgements in recent years have led to uncertainty as to what constitutes a function of a public nature, and therefore over which bodies are subject to the Human Rights Act (your Legal Department will be well aware of the issues). Of particular interest to many local authorities is the status of care homes with local authority-funded residents.

The Government is attempting to clarify the position on public functions but this may take some time, and even then it may not address all the issues. For example, even if it is found that local authority-funded residents of a care home do have the protection of the Human Rights Act, then privately funded residents in the same home still would not. If care homes are found to be outside the remit of the Act, then the local authority might be held responsible for any breaches.

One way to resolve these problems is to use contract specifications to ensure that service providers' levels of service are at a level that would satisfy the requirements of the Human Rights Act. Guidance on doing this was originally issued by the former Office of the Deputy Prime Minister in 2005 and the Department for Communities and Local Government has re-issued this; details can be found in this Guide.

### **Important Points In Planning & Tendering**

- You should clarify your equalities objectives and consult (including external providers and members of staff) to establish whether any issues exist and whether any race equality monitoring is done. You should also consider whether equality objectives might be better met through different packaging or timescales.
- You must consider whether the duty to promote equalities issues should be built into the contract; this might be on the basis of an Equalities Impact Assessment (refer to

the corporate template for details). You must also include equality of opportunity when evaluating a contractor's workforce capability.

- You should use the specification to set out what you expect from the contractor in terms of promoting race equality. You should also consider issues concerning sex, disability, religion or belief, sexual orientation or age. Any requirements should be clear so that they can be verified and monitored. The CRE publication mentioned above gives details and examples of how this can work in practice.
- You should use contract conditions to set out your requirements for the contractor's race (and other) equality obligations.

If there are equalities issues linked to the area of procurement, these should be mentioned in any advertisement. Part of the pre-qualification questionnaire should relate to race (and other) equality issues. As well as asking questions linked to RRA legislation, the Local Government Best Value (Exclusion of Non-commercial Considerations) Order 2001 (see Section 3.6) allows authorities to ask about a range of workforce management issues.

The points relating to pre-qualification questionnaires apply. The invitation to tender should include information about the Council's equality policies, how relevant these are to the procurement activity in question, facts about the Council's population distribution and any other relevant data from equalities monitoring activities.

Where equalities is a core requirement, you must ensure that evaluation criteria directly cover this requirement; you should evaluate all statements made and evidence presented by the overall contract objectives.

## **b. Guidance on Contracting for Services in Light of the Human Rights Act 1998**

### **Issue**

Where a provider that is not a public authority provides a service to the public under contract to a public authority, that service needs to be provided in a way that takes account of the content of the Human Rights Act 1998 ("the HRA") relevant to that contract.

Providing a service in the manner indicated above will assist in the provision of an optimized service. Not to do so may expose the public authority to legal liability and, furthermore, may infringe the legal rights of service users.

### **Purpose**

This guidance note is designed to apply to all contracts where the HRA may be engaged. It is intended, in particular, to assist mainstream ("core" or "pure") public authorities in dealing with the issue identified above. This issue is at the heart of the Seventh Report of the Parliamentary Joint Committee on Human Rights ("the Joint Committee's Report") and is also addressed in the Audit Commission's report, "Human Rights - Improving Public Service Delivery" ("the Audit Commission's Report"). Specifically, this note attempts to deal with the Joint Committee's Report's recommendation for guidance on the protection of human rights through contract. This note suggests that a specification-based approach is the most

appropriate way to deliver this. When acting on this note, public authorities should take their own professional legal and procurement advice to ensure compliance with the HRA and public procurement law.

This note generally is directed towards services contracts, although brief consideration is given at the end of this note to mixed services and works contracts. Where reference is made in this document to suppliers it means suppliers of services or mixed services and works as appropriate.

### **Use of Contractual Conditions**

Section 6 of the Joint Committee's Report discusses two options for attempting to protect human rights through contractual mechanisms. The first is through contract between the public authority and the supplier; the second is through contract between the supplier and end user, for example, care home resident.

### **Consistency, Enforceability & Enforcement Issues**

Some very practical problems around consistency of approach, enforceability and enforcement arise under both options identified above.

Whilst creative use of the Contracts (Rights of Third Parties) Act 1999 ("the 1999 Act") might enable end users of services to have enforceable rights against suppliers, the practical issue would remain of whether end users were in a suitable position - for example, through having the knowledge and financial resources to pursue legal action - to enforce those rights; this point is recognised in the Joint Committee's Report. Further the supplier market will often be resistant to use of the 1999 Act to confer rights on third parties. It can result in the creation of a very large and practically, if not theoretically, uncertain class of beneficiary; this may well be perceived to increase supplier risk to an unacceptable extent, particularly if it causes difficulties for suppliers in laying off risk via insurance arrangements.

In relation to consistency, contractual terms will, inevitably, be affected by the nature of the service to be delivered and by the process by which that contract is put in place. For much public sector contracting, this will mean contracts that are put in place following EU-wide competitive tendering. The procurement process must ensure that artificial barriers to participation are not raised. In this respect the particular needs of small and medium-sized enterprises ("SME"), wherever in the EU they may be based, need to be borne in mind. SMEs may include local businesses, ethnic and minority businesses, social enterprises and voluntary and community organisations. (Whilst public authorities should not ignore the benefits offered by SMEs they must at the same time ensure that their policies comply with public procurement law, which means, in this context, not discriminating against larger organisations). In practical terms, recognising the particular needs of SMEs means keeping the process as simple and understandable as possible. This point, and its relationship to consistency, is expanded below.

## Contracting For Concepts

Public authorities need to consider the commercial effects of contract conditions. An obligation simply, for example, to comply with the HRA as though the supplier were a public authority is likely to be resisted. In particular, since the HRA deals with a number of concepts whose application in particular circumstances could be a matter of legitimately differing views, suppliers may object that they cannot fully ascertain the nature of the obligations that they are being asked to undertake. This is likely to be the case, in particular, for SMEs with their more limited resources. Uncertainty as to the nature of contractual obligations would be likely to result in higher bid costs, as suppliers sought to price perceived risk; it might also mean an increased unwillingness to bid since suppliers might feel unable to price risk.

Even if suppliers felt able to accept the commercial consequences of contractual provisions of the type identified above, this would not necessarily mean that service provision in a particular area would be uniform as between private sector and public sector delivery. This would be because the private sector supplier might legitimately determine that the HRA obligation should be discharged in one way, with the public authority taking a different view. The public authority could seek a contractual power to determine the nature of the HRA obligation with which the supplier would have to discharge, but it is likely that a bare right of direction such as this would be unacceptable to a large number of suppliers since it would create a secondary area of contractual uncertainty. Even if a public authority were able to secure such a provision, it would be likely to be linked to contractual change procedures, and thus introduce cost uncertainties for the public authority.

The Audit Commission's Report suggests that ensuring the human rights protection of service users should lead to improved services. In connection with this, it is noted that preserving a wide and active supplier base, and thus a competitive marketplace for the delivery of those services, is a driver towards improved delivery; the contractual approach taken needs to reflect both of these points.

### An Approach Based on Contract Specifications

For the reasons set out above, it is suggested that the most fruitful way for public authorities to proceed when attempting to contract to secure the protection of human rights for service users is via the specification of services. The specification provides potential suppliers with a statement of the public authority's requirements and will form a key part of any contract with the supplier. It is critical to get the specification right.

*It is suggested that the public authority should detail in the specification the activities which it considers will be required to be performed by the supplier, including output specifications relating to processes where these help to define the performance characteristics of the service*

## Advantages

There are several advantages to such an approach:

1. It provides all potential suppliers with a very high degree of certainty as to what will be required from them. This should find itself reflected in competitive bids from suitably qualified suppliers. A competitive supplier base can provide opportunities for greater innovation, efficiencies and higher quality services
2. It enables the public authority to ensure that there is a mutual understanding as between itself and the supplier that the services will be delivered in a particular, HRA compliant way
3. It enables the public authority to fully reflect the needs of relevant stakeholders in the service delivered. Where appropriate, users of the service could be invited to feed into the process of drawing up the specification, thus making the service delivered more responsive to their needs and aspirations, including end user expectation that human rights issues have been satisfactorily addressed
4. It provides transparency as to the way in which the public authority has sought to secure the discharge of the HRA obligations it has. Flowing from this, it assists the public authority in monitoring and enforcement of those obligations (and auditing bodies similarly)
5. It may be possible to adopt greater commonality on key service delivery issues via this route, than via contract terms. For example, a public authority consensus view as to the way in which certain issues should be dealt with could be fed into all relevant contracts. In this way, the culture of respect for human rights can be fostered, particularly if the views of end users are sought as part of that consensus building process, for example through the input of representative groups. It has to be recognized, however, that even with commonality between specifications, some differences may emerge in terms of the practical effect given to them during service delivery
6. Finally, such an approach is consistent with the need to view the HRA as part of a package of legislation designed to secure rights and freedoms. This picks up a point made in the Audit Commission's Report that few links between equalities and human rights legislation are made by public authorities. It may well be appropriate to deal with aspects of equalities legislation as they impact service delivery by means of a specification-based approach. It is suggested that a specification-based approach enables public authorities to properly integrate the requirements of all relevant legislation in a way which delivers a service that meets the needs of end users, provides certainty of obligation for suppliers and maximum value for the public purse

Public authorities should also consider the broader legal framework applicable to support them in meeting requirements under the HRA. For example, under the Local Government Act 2000, local authorities are required to prepare a 'community strategy' and have powers to promote the economic, social and environmental well-being of their communities. They must, of course, comply with Best Value and, when relevant, public procurement law in so doing.



## **Contract Terms to Support a Specification-Based Approach**

Where a significant degree of certainty is provided to suppliers as to the scope of their obligations, they may be more willing to accept some residual contractual powers of direction from public authorities in 'grey' areas at the margins. If public authorities are able to include these in their contracts their ability to ensure that service delivery reflects the public authority's view as to what is necessary to secure compliance with the HRA will be enhanced.

Further, public authorities may wish to seek to promote the human rights culture and the equalities legislation by adopting an approach which requires the supplier to use all the care, skill and diligence to be expected of a suitable, skilled and experienced supplier providing services of the type to be performed under the contract. This is wording used in many professional appointments, and would provide the public authority with additional tools to ensure performance of the specified services to a generally accepted industry standards. This may, in turn, support a virtuous circle of raised standards.

## **Procurement Processes to Support a Specification-Based Approach**

### **Sign-off procedures**

First, it is suggested that a public authority's contractual sign-off procedures should indicate that the provisions of the HRA and equalities legislation have been considered. Whilst it is impossible to provide hard guidance on the stage at which this should be done, because of differences in public authorities' procurement models, it is suggested that this sign-off should be achieved pre-tender.

### **Checklists**

Secondly, it may well be helpful for public authorities to develop checklists of issues to be considered before any form of sign-off can be given. These checklists should not be exhaustive, in the sense of precluding consideration of issues relevant to a particular procurement. Issues that public authorities may wish to consider include:

- Whether the delivery of the particular service is likely to engage the HRA (and/or equalities legislation), and if so which rights (parts) in particular. A good example of a service that might engage the HRA (and equalities legislation) would be the provision of care services to vulnerable members of society. Another would be the delivery of an administrative service; the latter would need to recognise the physical or linguistic accessibility needs of particular service users
- Identifying the steps that have been taken to define those needs to ensure that the relevant rights are respected (and other legal duties fulfilled), for example consultation with professional advisers and/or representative end users. The results of this process would be reflected in the specification
- Identifying any decisions taken which may lead to those rights not being respected and/or needs not being met, in whole or in part (for example because of competing requirements of other services or other service users), justifying those decisions by

reference to the HRA (and/or equalities legislation, as appropriate) and setting out any alternative strategies for respecting those rights and meeting the relevant needs

- Specifically identifying contract monitoring arrangements for any areas of particular sensitivity and
- Identifying the consideration that has been given to enforcement mechanisms in the event of supplier underperformance, so as to avoid situations where the public authority is left without an effective remedy (and thus cannot meaningfully act in relation to the contract to secure the rights and meet the needs of end users) and to create a situation where the supplier always has an incentive to deliver

Whether or not a checklist approach is adopted, public authorities should ensure that appropriate weighting is given to the relevant parts of the specification at evaluation.

### **Reference Back to the Public Authority**

Thirdly, linked to the point made above about suppliers potentially being willing to accept some residual contractual powers of direction from public authorities in 'grey' areas when the basic scope of supplier obligations is clear, public authorities may wish to consider specifying that identified decisions, which the public authority regards as being likely particularly to engage the HRA (and/or equalities legislation), need to be referred back to the public authority for determination.

### **Detailed Content of Specifications**

Specifications could require suppliers to perform certain tasks as part of the delivery of relevant parts of service to ensure that relevant human rights considerations have been taken into consideration. For example, a public authority might choose to require the supplier to consider and record certain matters as part of the preparation of a care plan. This might take the approach of requiring the supplier to work through certain checklist items; the approach might be much the same as for the internal processes of the public authority. It is worth repeating that there is a need here for the public authority to ensure that the specification remains within permissible bounds, from a public procurement law point of view, so far as specifying the method of delivery is concerned. In short, this means that processes must be specified in output terms, and limiting the specification of processes to those matters that help to define the performance characteristics of the service.

Other fruitful areas for detailed specification could include, for example, output specifications in relation to ensuring that those engaged in service delivery are aware of the implications of the HRA and equalities legislation relevant to the performance of the contract. This would help to ensure that where a supplier is to determine certain operational policies relating to service delivery it does so in a way that is compliant with the legislation, for example by recognising that that policy may need to be applied flexibly to accommodate particular circumstances.

In preparing specifications for a mixture of services and works, public authorities should extend their consideration of HRA (and equalities legislation) issues to practical matters relevant to the design of the works, as well as to process output specifications. For example,

physical characteristics of, for example, a prison, might combine with process to result in infringements of the HRA. The standard of what was required would depend upon the circumstances. This lends support, however, to a tailored, specification-based approach, rather than an attempt at blanket coverage of issues via uniform contractual terms and conditions.

### **c. The Equalities Impact Assessment & Procurement**

Equalities Impact Assessments (EIA's) are a powerful tool, which can identify and address any potential for discrimination before new policies and services are introduced - this includes all procurement activity. For procurements valued at £100,000 and greater, the lead procurement officer must conduct an EIA for their procurement exercise. However, a monetary limit is not the only factor that needs to be considered when equalities issues

The EIA guidance, self-certification guidance and the report template can be found on the Lambeth internet site at:

<http://www.lambeth.gov.uk/Services/CommunityLiving/EqualityDiversity/EqualitiesImpactAssessments.htm>

### **d. Community Safety**

The Community Safety division at Lambeth works to:

- Combat the impact of drugs and alcohol
- Reduce violent crime including domestic violence
- Invest in young people, to reduce crime
- Support victims and witnesses, and challenge hate crime
- Tackle burglary, robbery and prostitution
- Tackle anti-social behaviour
- Improve the quality of your neighbourhood
- Keep you better informed and involved

The Team works in partnership with the police, probation service, health agencies and other organisations as part of the Safer Lambeth partnership, aiming to reduce crime, improve quality of life and make Lambeth a safer place to live, work and visit. How do community safety issues have an impact upon procurement and responsible procurement at Lambeth? Section 17 of the Crime and Disorder Act 1998 for those Commissioning Services and Contracts states:

*“Without prejudice to any obligations imposed upon it, it shall be the duty of each authority to which this section applies (i.e. local authorities, police authorities and national parks) to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.”*

A plainer English version was provided by the Home Office in their Crime and Disorder Guidance in 1998. It states:

*“...The Act creates a general duty on each local authority to take account of the dimension in all of its work. All policies, strategies, plans and budgets will need to be considered from the standpoint of their potential contribution to the reduction of crime and disorder”*

The effective implementation of Section 17 needs to ensure that all Council departments have community safety embedded within their planning, policy and operational day-to-day activities – this includes commissioning and procurement.

Procurement officers at Lambeth must consider and report on community safety implications in their procurement exercises at three stages – when seeking approval, when seeking contract award and when regularly monitoring their contracts. For more information and assistance in identifying what the community safety implications for a procurement exercise might be, officers are advised to contact Kate Newham in the Community Safety team directly at

[knewham@lambeth.gov.uk](mailto:knewham@lambeth.gov.uk). More information (along with the Lambeth Community Safety Strategy) can be found on the Lambeth website at <http://www.lambeth.gov.uk/Services/CommunityLiving/CrimePrevention/CommunitySafety.htm>

*The Home Office has stated that Section 17 emphasises “the vital work of preventing crime and a new focus across a range of local services. It is a matter of putting crime and disorder considerations at the heart of decision-making.” All council services have a valuable contribution to make to ensure that our strategic goals on community safety are achieved whatever service we come from at whatever level*

#### **e. Purchasing Food In Lambeth**

Whilst the Council purchases very little food directly, it is a large part of the 2 catering contracts we currently hold and for services that purchase food on our behalf for events. In these situations officers need to consider the sustainable factors involved with the food that a supplier will purchase for us to use. For example, Lambeth is a Fairtrade Borough and where we or our supplier is purchasing tea, coffee, sugar and bananas our specifications need to request Fairtrade products, wherever possible. There will be different standards or quality marks for different food categories so it can be difficult to know which is which; have a look at the DEFRA website for more information about quality marks and food purchasing in the public sector: <http://www.defra.gov.uk/food-farm/>.

When purchasing meat and dairy food products suppliers need to provide information about their quality standards and accreditations. For example, Lambeth is aiming to achieve the RSPCA Gold Standard as part of our Animal Welfare Strategy and suppliers are encouraged to meet the RSPCA Freedom Food standard, or Compassion in World Farming Good Pig, Good Chicken and/or Good Dairy standards. Read more here:

[http://www.ciwf.org.uk/your\\_food/food\\_business\\_impact/default.aspx](http://www.ciwf.org.uk/your_food/food_business_impact/default.aspx) and see the Lambeth Animal Welfare Charter here: <http://www.lambeth.gov.uk/Services/Environment/AnimalWelfare/AnimalWelfareCharter.htm>.

For eggs Lambeth requires all eggs to be sourced from free range hens. Suppliers will need to provide proof of meeting this standard; an option is certification with the Good Egg Standard from Compassion in World Farming: [http://www.ciwf.org.uk/your\\_food/food\\_business\\_impact/default.aspx](http://www.ciwf.org.uk/your_food/food_business_impact/default.aspx). Fish should also be quality marked and Lambeth suggests Marine Stewardship Chain of Custody Certification <http://www.msc.org/>. Lambeth has also recognised the value of the Food for Life Catering Mark <http://www.sacert.org/catering> and suggest that caterers for children aim to achieve the Silver Mark qualification from them.

## 2. Economic

### a. Business Ethics & Lambeth Procurement

This section covers a code of ethical behaviour for all officers engaged in purchasing and procurement of goods or services. It includes conflicts of interests, gifts and hospitality. As stated earlier in this Guide, you should be fully aware and understand the contents and implications of Standing Orders and Financial Regulations in relation to procurement activity.

The Contract Standing Orders cover the conduct of individual employees in relation to tenders and contracts. They cover conflicts of interests, pecuniary interests and the acceptance of gifts and hospitality. Essentially you should not give the impression to any member of the public, organisation or to your colleagues that you have been influenced by any offer of a gift or hospitality.

An employee, at any level, must not use their authority or office for personal gain (which extends to the gain of their family and friends). All employees have a responsibility to maintain unimpeachable standards of integrity in all their business relationships that includes rejecting any business practice that might reasonably be deemed improper.

*In addition, you should be aware of the Code of Conduct within Lambeth's corporate HR standards. The key point is that "you must report immediately to your manager/supervisor, or other more senior officer, any attempts to bribe you or any evidence of corrupt or improper conduct by others."*

You should make known to a relevant senior manager all relationships of a business or private nature with contractors or potential contractors. You must not show special favours in the tendering process, or in respect of the supply of services or permissions from the Council, to businesses run by friends or relatives.

Employees involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the authority. Senior employees who have both a client and contractor responsibility must be aware of the need for accountability and openness.

Employees in contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers and other contractors and sub-contractors.

Confidential information on tenders or costs for internal or external contractors must not be disclosed to any unauthorised party.

The Ethical Code of the Chartered Institute of Purchasing and Supply supports the following checklist for general ethical guidance in procurement:

- Declaration of Interest: Any personal interest that may impinge or might reasonably be deemed by others to impinge on an employee's impartiality in any matter relevant to his or her duties should be declared
- Confidentiality and accuracy of information: The confidentiality of information received in the course of duty should be respected and should never be used for personal gain; information given in the course of duty should be true and fair and never designed to mislead
- Competition: While bearing in mind the advantages to the Council of maintaining a continuous relationship with a supplier, any arrangement which might, in the long term, prevent the effective operation of fair competition, should be avoided
- Hospitality: Modest hospitality is an accepted courtesy of a business relationship. However, the recipient should not allow him or herself to reach a position whereby he or she might be, or might be deemed by others to have been, influenced in making a business decision as a consequence of accepting such hospitality. The frequency and scale of hospitality accepted should not be significantly greater than the Council would be likely to provide in return
- When it is not easy to decide between what is and is not acceptable in terms of gifts or hospitality, the offer should be declined or advice sought from the employee's manager

**You should not accept any hospitality once the tendering process has begun.**

The Public Interest Disclosure Act 1998 protects employees who “blow the whistle” about wrongdoing. It applies where an employee has a reasonable belief that their disclosure tends to show one or more of certain specified breaches. In relation to procurement, these can include a criminal offence, a breach of a legal obligation or the deliberate covering up of information tending to show any of these breaches. You must report any breaches that come to your attention to the Monitoring Officer (Lambeth Legal Team), Head of Procurement and Partnership Strategy, the Chief Internal Auditor, or you can use the Council's Whistleblowing Charter (a leaflet is available from the Information Desk in the Town Hall). The Council will give you every support to ensure that you suffer no adverse effects as a result of reporting any legitimate concern.

**b. Social Enterprises and the Voluntary & Community Sectors**

**Social Enterprises**

Social enterprises are businesses with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners. Their social (and often environmental) objectives, combined with their entrepreneurial flair, can provide an excellent basis for the delivery of public services to their local community.

Most social enterprises are small and medium-sized enterprises (SME's) that can offer the same advantages. In addition, social enterprises may offer other benefits because of their closeness to local stakeholders and their focus on achieving their social objectives, which may contribute to a council's sustainable development and community plan objectives. The options for service delivery include:

- Contracting with existing social enterprises
- Establishing a new, not for profit social enterprise, which could take on employment of council staff and deliver a service previously managed by the authority
- Supporting and developing the capacity in local social enterprises to take on a proportion of a service tailored to local needs

Enabling social enterprises to compete effectively for public sector contracts is now within the remit of the Office of the Third Sector.

### **The Voluntary & Community Sector**

There are around 500,000 voluntary and community organisations in the UK (of which, 188,000 are registered charities) and these are growing in number every day. These range from small, local community groups to large, established, national and international organizations. Some have no income at all and rely on the efforts of volunteers; others are, in effect, medium-sized businesses run by paid professional staff.

Lambeth regards the voluntary and community sector as a key partner in the search for excellence in the delivery of public services. Whether national or locally based, driven by the power of faith, of imagination or specific goals, our voluntary and community organisations demonstrate the skills, passion, and commitment to get things done. They have special talents in reaching and gaining the trust of disadvantaged groups in our society and their contribution undoubtedly makes our communities safer and more rewarding places to live.

The value for money and innovation which voluntary organisations can bring to the delivery of public services is considerable, but often times many voluntary sector organisations striving to secure contracts in support of the Council meet up with several hurdles. The necessary process of embedding good guidance in working with third sector organisations requires, above all, a change of attitude by both procurement officers and key decision makers; the assumption in procuring public services that the choice is just between public and private sector providers must be challenged. Greater awareness is needed of the valuable contribution which the voluntary sector can make if we are to place it firmly on the agenda as a potential provider, whether directly or through sub-contracting.

Procurement officers at Lambeth need to understand and address the barriers which the voluntary and community sector can face in bidding for our contracts. Difficulty in finding out about opportunities, too little notice of forthcoming procurements, disproportionate paperwork and expense in tendering, lack of recognition of the capabilities of voluntary organisations are just a few of the problems that occur all too frequently. The public sector must embrace the voluntary and community sector as a partner, not just in the procurement and delivery of



services, but in the planning of required service outcomes and the development of effective procurement strategies. Continuing dialogue with the market and early involvement and consultation with suppliers, especially where new services are being planned, is crucial to the shaping of effective procurement strategies and the acquisition of innovative, responsive and value for money services.

The Office of Government Commerce (OGC) has produced an excellent good practice Guide for procuring services from the voluntary sector, “Think Smart - Think Voluntary Sector”. You can find the complete document here:

<http://commercial.homeoffice.gov.uk/documents/thinksmart.pdf?view=Binary>

The Lambeth Business Support Network (LBSN) Directory is an easy to use register of business support services available in the borough. You can find the latest copy here:

<http://www.lambeth.gov.uk/Services/Business/BusinessSupportAdvice/LambethBusinessSupportNetworkDirectory.htm>. For additional resources and some helpful publications you should also visit

[www.socialenterprise.org.uk/procurement](http://www.socialenterprise.org.uk/procurement).

**c. Local Businesses**

Lambeth Council recognises its responsibility to the local economy and actively supports equal opportunities. The Council has a policy to support the local community and this includes offering local businesses the opportunity to work for the Council wherever possible - without infringing competition rules or value for money principles. While the scale of Lambeth’s activities means that most procurement is with large national organisations there are various ways in which small local and ethnic minority businesses (EMBs) may be supported. This section offers some ideas and principles. We emphasise that the term “local business” in Lambeth refers predominantly to a small business and often an EMB.

This section may also be able to advise you on the following relevant matters:

- Promoting codes of practice in employment in various sectors (where contractors are asked, although not compelled, to support the codes)
- Providing subsidies to employers to recruit locally
- Brokering agreements with local employers and local regeneration programmes (which may utilise equalities legislation)
- Supporting contractor associations and joint ventures

*The policy of supporting local businesses is linked to Lambeth’s policies on equal opportunities and equalities; it is also linked to Lambeth’s regeneration initiatives. Advice on possible links to regeneration initiatives is available from the Enterprise team. You should also be aware that the Council, through its Community Renewal section, is continuously reviewing how it can support local business*

In addition, the Council's rationalisation exercise relating to its suppliers is relevant. While the Council is seeking to reduce the number of "first tier" suppliers (i.e. suppliers with whom the Council deals directly), there will be opportunities for local businesses to act as "second tier" suppliers, i.e. subcontractors to first tier suppliers. The Council will be developing these areas over the coming months and additional guidance may emerge.

*In some areas of procurement activity it is most unlikely that local businesses can be considered, but you should take steps to determine whether or not this is the case. If potentially suitable local businesses exist, you should consider how you communicate with them to ensure they are aware of opportunities and tendering requirements*

The Council relies heavily on large contracts; many services (e.g. street cleansing) are most effectively provided through Borough-wide contracts. In addition, the Council obtains significant benefits of scale through procuring goods through corporate contracts. Indeed some common items are provided through the London Contracts & Supplies Group and the unbundling of many existing contracts, while not necessarily anti-competitive, could adversely impact on efficiency and value for money. However, there are areas where local businesses could usefully complement larger contracts. Examples might include specialist printing, specialist catering for events, community-based grounds maintenance projects, taxi services, staffing agencies and top-up services for major Borough events.

The following are examples of practical steps that you should consider to support the Council's policy in relation to local businesses:

**1. Adopt a Proactive Approach to Local Businesses**

Most importantly, the most likely instance in which local businesses can secure more work with the Council is when a positive attitude is adopted and encouraged by Council buyers, with mutual efforts to inform local business about opportunities and capabilities.

**2. Encourage General Expressions of Interest and Advertise Opportunities**

Small businesses that believe they can offer goods, works or services to the Council will make their interests known directly to the relevant department or section. As a buyer, you should give consideration to such interests and advise the businesses about what opportunities, if any, could arise in the future. This is not a time-consuming activity, it improves the Council's image among local businesses and, from time to time, it could yield a useful new supplier.

**3. Encourage Consortia Bids Wherever Practicable**

Because so many Council contracts are large, with fairly demanding qualification criteria, small businesses could be encouraged to consider working with others when seeking Council business. One approach is for them to form a consortium in response to a particular opportunity. This can be worth considering for businesses that have some of the specialist skills that are required but lack others, or they cannot fulfil some of the general qualifications (e.g. financial records or quality procedures). Although opportunities for consortia are quite

rare, Council buyers should encourage such bids where they comply with procurement rules and they do not require significant extra resources.

#### **4. Facilitate Subcontracting Arrangements**

Another more common approach is for small businesses to work with others on a subcontracting basis. This subcontracting can operate in different ways, e.g. supplementing a larger firm's resources, offering a specialist facility to a larger firm, or working alongside another small company that is better qualified to take contractual responsibility. A local company with local staff or local premises may prove attractive to a large company that has just won a Council contract.

#### **5. Tailor Some of the Pre-qualification Requirements**

Most shortlisting criteria present clear requirements for companies wishing to work for the Council. The Council can make no compromise on legal obligations such as health & safety and equal opportunities / race relations. Many contracts require a business to be of a certain size, with a certain minimum turnover and established for a certain minimum period. CPT can offer guidance on such criteria and this guidance will include particular consideration of small or new companies. For example, new companies might not be automatically excluded simply because they lack audited accounts. The Council may consider alternative evidence of turnover and financial stability (e.g. bank and accountant's references or technical and trade references). Insurance requirements relate to employers, public liability and professional indemnity insurance. The levels for small firms require care as you need to assess risk and avoid demanding excessive amounts. Evidence of quality and environmental management would normally be required, but this need not require ISO9001 or ISO 14000 and CPT can give guidance on what should be expected from small firms. It should be noted that any adjustments to pre-qualification criteria would only apply because a firm is of small size or newly established. They cannot apply simply because a firm is local as this would breach competition law.

#### **6. Use Legislation to Undertake More Quality-related Evaluation**

For some larger contracts you should be aware of the impact of the Local Government Best Value (Exclusion of Non-commercial Considerations) Order which came into effect in 2001. The Order, made under Section 19 of the Local Government Act 1999 relaxes the prohibition on best value authorities' consideration of "workforce matters" when letting contracts, imposed by Section 17 of the Local Government Act 1988. It is now permissible during evaluation to take account of terms and conditions of employment, approach to promotion, transfer, training and industrial relations, to the extent that they are relevant to the delivery of best value, or for the purposes of a TUPE transfer. While it is not possible to take account of whether a business is local or an EMB, these additional considerations may enhance the Council's ability to choose on merit rather than price. This, in turn, might allow more opportunities for well-run small companies.

There are various external initiatives and organisations that give support to local businesses and EMBs. The Council will take account of these as part of its community support programme; these include the Lambeth Small Business Growth Initiative, Business Link for London, Fit To Supply, London Equal Opportunities Forum, the Ethnic Minority Business Forum and Lambeth Voluntary Action Council. Lambeth.biz is also very useful, local resource and more information can be found on them and their services below.

The Community Benefit Clauses document can be found on the Corporate Procurement intranet site. These local labour clauses are examples of those included in a recent contract but you should seek advice from Legal Services as to whether or not these types of clauses are appropriate for your particular contract.

#### **d. Contracts Finder: The Supplier Route to Government**

Contracts Finder is a service aimed at removing unnecessary obstacles that make government procurement difficult for small businesses. It aims to make it easier for small businesses to gain access to, and ultimately win, Government contracts; suppliers can advertise their business for free and Lambeth officers can advertise their tenders for free.

Contracts Finder allows public sector buyers to promote their lower-value opportunities online to thousands of firms keen to work with government. Essential to achieving the objectives set by Government for Contracts Finder is the support of Local Government. With more supplier choice available in one place, the new portal will make public sector buyers seriously question whether they are getting value for money from their current range of providers. The portal will save buyers time and effort in sourcing new suppliers and help them provide public services more cost-effectively.

Contracts Finder opens up this market worth billions of pounds to all types of businesses including small firms, start-ups and social enterprises, and at the same time, gives public sector buyers more choice. It also gives the public sector access to small businesses that often have innovative products and services and can offer better value for money.

As well as stimulating the public sector supplier base, Contracts Finder also helps the public sector stay compliant with EU law. This requires the appropriate advertising of all public sector contract opportunities, no matter what value or type - not just those over the OJEU thresholds. This requirement has been dictated by the European Court of Justice, and their judgment emanates from the principles of the Treaty of Rome. There is no charge to buyers for using the service.

#### **What's In It For Buyers?**

Using Contracts Finder, public sector buyers can post contract opportunities online and publicise their lower-value contracts for free. Posting an opportunity couldn't be easier — all you have to do is register online and follow the instructions. Buyers can:

- Publicise all lower-value contracts and attract a broader range of potential bidders
- Use Contracts Finder as an extra channel to supplement existing procurement activity

- Potentially save development costs by using the opportunities portal instead of setting up a new online service
- Benefit from:
  - Access to more innovative products and services from a wider range of suppliers. In particular, small businesses are known to be early adopters of new technology
  - The flexibility offered by small businesses, whose overheads are often lower
  - The potential to gain better value suppliers by contracting with leading entrepreneurs in your local area

### **Guidance on The Publishing of Lower Value Contracts**

The European Commission has published guidance on how public authorities should award contracts of low monetary value fairly. These contracts account for the vast majority of public contracts in the EU – over 90% in some Member States.

Although lower-value contracts are not covered by the EU Directives on public procurement, it is well established that their award should nevertheless comply with the internal market principles of transparency and non-discrimination. The Commission’s guidance also advises on the means of advertising these requirements and makes reference to the use of portal websites such as Contracts Finder: <http://www.contractsfinder.businesslink.gov.uk/>.

#### **e. Supply 4 London**

Supply 4 London is a web based procurement portal (or “hub”) for London local authority procurement officers and suppliers; it pulls together in one place all procurement related resources that buyers and sellers will need to do business with local government in London. The portal includes:

- A restricted buyer access facility for procurement systems, information repositories, databases, discussion groups, opportunity creation and the issue of an on-line prequalification questionnaire
- A public facing facility with contract and contract opportunity search and access capability
- a restricted supplier access facility to express an interest in opportunities, complete and store on-line qualification questionnaires, market services and products and advertise for sub-contractors
- An optional e-tendering solution
- Links to an authority’s preferred e-solution package
- Links to other regional supplier notice boards and databases such as the OJEU, Compete For, Contracts Finder, etc.
- Links to other systems such as eCatalogues, Sharepoint, Oracle, SAP, etc.
- Links to the London Councils Contract Register Service and the Online Expenditure Analysis tool

- A collaboration section that will bring together local authorities with similar contract needs, encouraging them to tender in partnership

Lambeth and 27 other London local authorities have signed up to the portal and Lambeth is part of the project delivery group. Corporate Procurement are in the process of reviewing the portal's offer and Lambeth's procurement processes – and how the 2 will fit together. When we have decided upon a plan, the departmental heads of procurement will be notified in the first instance. In the meantime, be sure to recommend your suppliers to register on the website for free; you can see the site at <https://www.supply4london.gov.uk/>.

## 2. Environmental

### a. Procurement & the Environment

Sustainable procurement is the application of sustainable development principles to procurement and is a key activity in helping to ensure that the world remains habitable and that people have a decent quality of life. The fundamental aim of sustainable development is to secure the future; developing sustainably means ensuring that our actions today do not limit our quality of life in the future.

Lambeth Council has an Environmental Charter and is committed to the concept of sustainable development. One of the Council's main aims is to minimise the environmental impacts of its actions and to maximise opportunities for delivering environmental improvements. In respect of the purchasing of goods and services, the Council will promote the efficient use of natural resources in the Council, among businesses and within the wider community; the Council will ensure that all its procurement activity reflects sustainability and whole-life costs.

In order to put the above policy into effect, officers must adhere to the Council's guidance on environmental procurement:

- Only buy supplies when necessary and minimise the amount of materials consumed
- Develop and use systems whereby products can be re-used/re-allocated within the organisation or donated, instead of discarded
- Buy products that are made from recycled material and/or are recyclable, and have minimal packaging; furthermore, specify that the supplier of the product should operate or subscribe to a take-back scheme for packaging and equipment that can be re-used or recycled
- Select the more durable, environmentally-friendly alternative when purchasing
- Maintain and repair furniture, equipment and other products wherever possible in order to extend its life
- Select the more environmentally-friendly option for cleaning, pest control and horticulture use

- Buy energy efficient appliances and equipment
- Use vehicles that are more energy efficient and less polluting
- Specify wood and wood products from Forest Stewardship Council (or equivalent) certified suppliers

Officers must consider the above list and identify which points may apply to their procurement activity.

Additionally, officers should consider the below points:

- The Council has a Sustainable Construction Policy to ensure that all new-build or refurbishment projects consider the environmental implications of building materials, construction activities and building operations. If your procurement activity is related to construction, you must ensure that this policy is adhered to
- The Council has also adopted a Sustainable Timber Policy under which the Council will give preference to timber and timber products that carry the Forest Stewardship Council or equivalent trademark. Again, if your procurement activity is relevant, you must ensure that this policy is adhered to
- Officers should consider whole-life costs to the Council. This takes into account the initial purchase or contract cost and the longer-term financial benefits that environmentally friendly products or services will deliver
- The following factors should also be considered in relation to the environmental impact of procurement:
  - Sourcing and use of natural resources, and whether those resources are renewable
  - Type and quantity of raw materials and energy used in the manufacture
  - Energy used and pollution caused from transport – in both delivery and operation
  - Product and equipment durability, adaptability, possibilities for re-use, recyclability, packaging and resulting waste disposal issues
  - Environmental implications of operation and maintenance, including resource consumed, pollution caused and waste generated
  - Officers should also consider including environmental performance criteria in their specification, tender evaluation and monitoring processes. This is allowed wherever environmental criteria are a part of the technical requirement