

**IMPLEMENTATION OF THE STRATEGIC REVIEW
OF PUBLIC PROCUREMENT POLICY
EQUALITY IMPACT ASSESSMENT**

Department of Finance and Personnel

May 2002

SECTION 1: INTRODUCTION

Background

- 1.1 This equality impact assessment (EQIA) addresses the Department's policies of Procurement, agreed by the Executive on 16 May 2002.
- 1.2 Section 75 of the Northern Ireland Act 1998 requires all public authorities in carrying out their functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity:-
- between persons of different religious belief, political opinion, social group, age, marital status or sexual orientation;
 - between men and women generally;
 - between persons with a disability and persons without; and
 - between persons with dependants and persons without.
- 1.3 In addition, without prejudice to the above obligation, public authorities must also, in carrying out their functions relating to Northern Ireland, have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.
- 1.4 Schedule 9 of the Act requires public authorities to prepare Equality Schemes which should state, inter alia, the authority's arrangements for assessing the likely impact of policies adopted, or proposed to be adopted, by the authority on the promotion of equality of opportunity. The Department's Equality Scheme¹ was approved by the Equality Commission for Northern Ireland (the Commission) on 20 February 2001. The Scheme includes a commitment to carry out an EQIA on procurement policy and to establish a system to monitor the impact of that policy in order to identify the effects on the relevant groups.

¹ The Department's Equality Scheme may be viewed on www.nics.gov.uk/pubs/dfpequal.pdf

1.5 In November 2000, the Executive approved the setting up of a small DFP-led team to review Procurement Policy and Purchasing Arrangements in Northern Ireland Departments, their Agencies and NDPBs. The Procurement Review Team was established in February 2001. Its membership is at Annex A.

1.6 In conducting its review of Procurement Policy, the Department took account of the Equality Commission's Guidelines on Equality Schemes which state (at Section 2.1):-

“The promotion of equality of opportunity entails more than the elimination of discrimination. It requires proactive measures to be taken to secure equality of opportunity between the groups identified in Section 75(1). The equality duty does not inhibit action to counter disadvantage among particular sections of society – indeed such action may be an appropriate response to redressing inequalities of opportunity.”

1.7 The Department sought to ensure that the promotion of equality of opportunity was taken fully into consideration in the policy review by including the commitment in the Department's Equality Scheme to review public procurement policy in the Review Team's terms of reference and by requiring the team to identify the scope to use public procurement in Northern Ireland to further local social and economic objectives within the context of current EC and international law relating to procurement.

1.8 The full terms of reference for the Review were as follows:-

“Having regard to commitments in the draft Programme for Government to ‘develop and implement proposals to improve Public Procurement’ and in the Department of Finance and Personnel's Equality Scheme, to:

- consider the findings and recommendations of the Capita Report on Procurement Policy and Purchasing Arrangements within the Northern Ireland Civil Service Departments (1999);

- identify the scope to use public procurement to further local, social and economic objectives within the context of current EC and international law relating to procurement; and
- make recommendations for implementation to the Minister for submission to the Executive by June 2001, including an assessment of the equality impact of the proposed policy framework for procurement to be adopted by Northern Ireland public bodies”.

1.9 In developing its policy proposals, the Review Team included a specific chapter in its report concerning economic, social and environmental policy in public procurement and in developing the proposals in this chapter the need to promote equality of opportunity and to take account of the New Targeting Social Need policy was a central consideration. The Review Team made specific recommendations on equality and discrimination, on assisting persons employed in disabled workshops and assisting the unemployed into work.

1.10 In September 2001, the Executive noted the findings and recommendation of the Team’s Report and agreed that the report should be issued for public consultation before a final decision would be taken on the way forward in respect of the Executive’s public procurement policy.

1.11 The Review Team’s Report included as a separate annex the Team’s consideration of the Equality Impact of the proposed policy which had been prepared taking account of consultations with the Equality Commission and written submissions and a workshop on procurement as part of an Equality Conference organised by the Department of Finance and Personnel. The Assembly’s Finance and Personnel Committee, officials in HM Treasury’s Office of Government Commerce, Procurement Practitioners, Ministerial Advisers and Senior Officials in Northern Ireland were also consulted.

Previous Procurement Policy

1.12 Previous public procurement policy in Northern Ireland consisted mainly in complying with European Community and other international obligations, complying with United Kingdom law relating to public procurement, and Treasury guidance where applicable, but otherwise substantially leaving a considerable discretion to Northern Ireland Departments, their Agencies and non-Departmental public bodies as to how procurement was carried out. There was a lack of a single, overarching procurement policy, an absence of any cascade or sharing of best practice and up-to-date guidance, a lack of consistent management information and performance indicators, low levels of skill and expertise in procurement outside the central government bodies and little performance measurement or benchmarking activity, including identification of transaction costs.

New Public Procurement Policy

1.13 Public procurement policy is defined as “the acquisition, usually by means of a contractual arrangement of goods, services, works and other supplies by the public service”. The policy will not initially apply to public grants awarded to the private and voluntary sectors, but public bodies in receipt of grant will be expected to implement the policy.

1.14 The concept of “best value for money” should be the primary business objective in any procurement contract for public bodies. This is defined as “the optimum combination of the whole life cost and quality (or fitness for purpose) to meet the customer’s requirements. This definition permits a public body to compile a procurement specification which allows for the inclusion of social, economic and environmental policy objectives in a procurement contract.

1.15 Public procurement policy will be guided by 12 principles:

- i. **Transparency:** openness and clarity in policy and its delivery.
- ii. **Integrity:** no corruption, no collusion with suppliers or others.
- iii. **Competitive supply:** normally this will be best achieved by acquiring goods and services by competition unless there are convincing reasons to the contrary.
- iv. **Effectiveness:** meeting the commercial, regulatory and socio-economic goals of government in a balanced manner appropriate to the requirement.
- v. **Efficiency:** ensuring that procurement processes are carried out as cost effectively as possible.
- vi. **Fair-dealing:** treating suppliers fairly and without unfair discrimination, including protection of confidentiality where required, and without imposing unnecessary burdens or constraints on suppliers and potential suppliers.
- vii. **Responsiveness:** meeting the aspirations, expectations and needs of the community served by the procurement.
- viii. **Informed decision-making:** basing decisions on accurate information and monitoring to see that requirements are being met.
- ix. **Consistency:** suppliers should, all other things being equal, be able to expect the same general procurement policy across the public sector in Northern Ireland.
- x. **Legality:** conformity to EC and other legal requirements.

- xii. **Integration:** jointed-up government, meaning that procurement policy should pay due regard to other Northern Ireland government economic and social policies, rather than cut across them.
 - xii. **Accountability:** effective mechanisms must be in place in order to enable Accounting Officers and their equivalents in other bodies to discharge their personal responsibility on issues of procurement risk and expenditure.
- 1.16 The implementation of the new overarching public procurement policy will be governed by a Procurement Board, chaired by the Minister of Finance and Personnel, and comprised of the Permanent Secretaries of each Department, the Treasury Officer of Accounts, 2 external experts without a specific sectoral interest, a representative from the Comptroller and Auditor General, as an observer, and the Head of the new Central Procurement Body which will support the Procurement Board.
- 1.17 The policy will be applicable to all Departments, their Agencies and non-departmental Public Bodies. It will not be made compulsory for District Councils, but they will be advised on policy development and best practice by the Department of the Environment. While the decision-taking on policy will be centralised, procurement will continue to be the responsibility of the Permanent Secretary/Chief Executive of each public body, or whoever is the Accounting Officer for that body. However, it is expected that procurements will normally be carried out either through a Centre of Expertise or the Central Procurement Body. Centres of Expertise have a focus on particular specialised areas, have good and long-standing links with their operational areas, their customer base and with similar specialised groups in Great Britain and elsewhere. They are listed in the policy document but include Roads Service and Water Service of the Department for Regional Development, the Regional Supplies Service of the Central Services Agency and Education and Library Boards and Health Estates.

1.18 The Procurement Board will be tasked with taking forward the integration of equality considerations into procurement policy. These will include:-

- a pilot scheme to assist the unemployed
- the special contracts arrangement designed to help disabled workshops
- post contract award mechanisms to provide assurance that contract conditions are adequately monitored, including an internal mechanism for considering and resolving complaints by interested third parties that contract conditions have been honoured
- the development of a database of information for assessing the success of the integration policy.

1.19 The Executive have agreed to amend current Northern Ireland legislation to ensure that it provides unambiguously that direct and indirect discrimination is prohibited in relation to procurement on the grounds included in current Northern Ireland anti-discrimination provisions; to provide for anti-discrimination provisions in the Disability Discrimination Act 1995; and that equivalent sanctions, similar to those contained in the Fair Employment and Treatment Order 1998, should be introduced to prevent firms found guilty by a tribunal or a court of persistent and recalcitrant breach of anti-discrimination legislation from benefiting from public procurement contracts. These matters will be taken forward in the context of the Single Equality Bill.

SECTION 2: EQUALITY IMPACT ASSESSMENT

Consideration of Available Data and Research

Quantitative Data

- 2.1 The Department notes that the Review Team found it difficult to access reliable information on the extent of expenditure on public procurement in the Northern Ireland public sector. Best estimates indicate that in excess of £1.2billion is spent each year on public procurement by Northern Ireland Departments, their Agencies and non-departmental Public Bodies. This amounts to over 24% of total expenditure controlled by these Departments but the quantitative data to assess the impact of procurement policy was not readily available.
- 2.2 The Department also notes that information to assess the impact of procurement policy and an analysis of contracts was not readily available to the Review Team and that while the Team considered commissioning on this, it was not considered practicable within the given time constraints.
- 2.3 As a result of this policy review, Departments, Agencies and related bodies will be tasked with developing better management information systems so that data on procurement expenditure, on the type of purchases acquired and on suppliers can be provided more easily. Currently such information has to be sourced from many differing financial systems and a more tailored information source, on which to base on-going assessment of the impact of this policy both generally and in relation to Section 75 obligations, is required.

Qualitative Data and Research

- 2.4 In developing this policy, the Department took account of recommendations on public procurement prepared by:
- the Equality Commission for Northern Ireland and its predecessor bodies;

- the Standing Advisory Committee on Human Rights (SACHR);
- the Northern Ireland Affairs Committee of the House of Commons;
- the Better Regulation Task Force.

Academic research conducted in the United Kingdom, Europe and North America was also considered.

- 2.5 Also taken into account were the views of the Falls Community Council, submissions from West Belfast Economic Forum, Training for Women Network and the Committee on the Administration of Justice, following a conference at which the equality impact of procurement was considered.
- 2.6 Four meetings took place with the Assembly's Finance and Personnel Committee. In addition, officials in HM Treasury's Office of Government Commerce, procurement practitioners, Ministerial Advisers and senior officials in Northern Ireland were also consulted.
- 2.7 The Review Team's report was issued for consultation to over 400 individuals and organisations. Responses were received from 26 consultees who are listed in Annex B.
- 2.8 Responses to the consultation were considered by the Review Team and taken into account by them. The Department took account of the Review Team's response to the consultation exercise in finalising its policy proposals to the Executive.
- 2.9 Arising from its research and consultations, the Department:
- noted that the Equality Commission, its predecessor bodies, SACHR, the Northern Ireland Affairs Committee of the House of Commons and a

number of voluntary/community bodies favoured the inclusion of equality considerations in public procurement; and

- considered concerns expressed by procurement practitioners about practical and legal difficulties in the inclusion of considerations other than commercial in public procurement.

Assessment of impacts

2.10 Given the lack of quantitative data, it was difficult to assess if the policy recommendations would have adverse impact on any of the groups included within Section 75 of the Northern Ireland Act 1998. The Department has considered the revised policy in the context of existing Northern Ireland anti-discrimination legislation and European Union Directives on procurement and is satisfied that these proposals should not be directly or indirectly discriminatory against any of the groups covered within section 75 of the Northern Ireland Act 1998.

2.11 The Department is of the view that the revised policy could have a positive impact on equality of opportunity with regard to religious belief, political opinion, gender, and disability. In addition, the proposals are in line with the Executive's policy on targeting disadvantage and social need.

Contracting Out Services

2.12 Some of those who responded to the consultation exercise drew attention to research on the impact of contracting out services through Compulsory Competitive Tendering (CCT) in the Health and Education sectors.

2.13 The main findings from the research on contracting out services in the Health and Education sectors indicated that CCT policy had an adverse impact on female employment. CCT is no longer part of Northern Ireland's public procurement policy although contracting out functions/services is a

recognised option for public bodies and will be a potential part of the new public procurement policy.

2.14 Various actions can be taken by the contracting authority to alleviate concerns about the impact that the contracting out of a function/service may have on employees, for example, on their terms and conditions of employment and/or pension provision, when the employees are going to be transferred to the private sector company.

2.15 Each public body (the contracting authority) has to make its own judgment in relation to each contracting out procurement project as to:

- how it has regard to its Equality obligations;
- how it ensures that the employees likely to be affected by such a project are treated fairly and consistently, with their rights being respected and in an open and transparent manner;

2.16 The revised policy on procurement is the policy which applies **once a decision to contract out has been taken.**

Review of Opportunities for Public Private Partnerships

2.17 The Working Group on the Review of Opportunities for Public Private Partnerships has put forward proposals to the Executive which cover PPP projects of all kinds and specifically addresses the issues relating to employees in PPP projects. The Executive is consulting on the Working Group report, and the period for comments ends on 20 September 2002. The Executive will take the Working Group proposals and consultation responses into account in developing its future policy framework on PPP.

Consideration of measures which might mitigate any adverse impact

- 2.18 The revised policy makes provision for the integration of economic, social and environmental objectives into public procurement. In developing its recommendations on this, the Review Team took full account of the need to both avoid any adverse impact and also to pro-actively promote equality of opportunity. The Department and Executive have adopted the Review Team's recommendations adjusted to take account of consultation.
- 2.19 Integration is compatible with existing EC and international law within certain parameters; that the integration is transparent; that the integration does not discriminate directly or indirectly between suppliers; and that all the legal requirements as to the procurement process are complied with. Serving local Northern Ireland objectives is not permissible where it leads to discrimination against external actual or potential suppliers.
- 2.20 The revised policy provides potential to promote greater participation in Government contracts by people with disabilities and through a new focus on the "Special Contracts Arrangement Scheme" which should have a positive impact on equality of opportunity for people with disabilities.
- 2.21 The "Special Contracts Arrangement" operates in Northern Ireland and is designed to help workshops for people with disabilities to compete for public contracts. The scheme applies only to contracts below the threshold levels for EC/GATT rules and is open to workshops throughout the EU and the European Economic Area. The scheme has a low rate of take-up and the Department's policy will be to ensure that procurement staff in public bodies apply it at every opportunity. The outcome will be monitored annually by the Procurement Board.
- 2.22 The Department will initiate a pilot scheme, covering about 20 works and services contracts, which is aimed at assisting the "unemployed" into work. In order to guard against any potential discrimination, particularly against women, the definition of "unemployed" will be widened to include those not in

full-time employment, unemployed persons not signing on the unemployment register and unemployed persons from other countries. The final definition will be agreed after consultation with the Equality Commission. A condition will be included in the 20 contracts requiring suppliers to implement a plan for utilizing the unemployed in work on the contract, including work carried out by sub-contractors on the contract. The pilot scheme will be monitored and reviewed by the Procurement Board after 2 years of operation.

Alternative policies which might better achieve the promotion of equality of opportunity

2.23 Procurement policy is largely dictated by EC and international legislation. The Procurement Review Team considered a wide range of the legal and practical issues including possible alternative policies. The Department is satisfied that alternative policies to better achieve the promotion of equality of opportunity are not viable without a change in the EC Procurement Directives. A review of the Directives is ongoing but will not materialise for some time yet.

Formal Consultation

2.24 The Department carried out a formal consultation exercise as part of a review of this policy. In addition to written responses, the Department also held meetings with representatives of organisations and with the Assembly Committee. The Review Team's Report was issued to over 400 individuals and organisations. Responses to the consultation and views put forward by the Assembly Committee were considered by the Review Team to enable them to clarify or amend their original recommendations. The Department has accepted all of the Review Team's recommendations, adjusted as a result of comments received during the public consultation. The Executive has now endorsed the Department's proposed policy. The Department does not consider it appropriate to repeat the public consultation on the procurement policy, as adopted by the Executive. However, while the broad thrust of the policy has been agreed, the Department would still be content to receive comments on how the policy might best be implemented. The Review Team's

Report adjusted to take account of the consultation exercise and the response to points raised in consultation are available on the internet at www.nics.gov.uk/procurement.

Decision

2.25 Having considered the Review Team's report adjusted to take account of consultation, the Minister of Finance and Personnel submitted a policy memorandum to the Executive which took account of this equality impact assessment. The Executive has adopted the revised policy and has agreed that the new public procurement policy should be implemented in all Northern Ireland Departments, their Agencies and non-Departmental Public Bodies. The Procurement Policy document accompanying this EQIA gives more detail on the agreed policy.

Monitoring for adverse impact

2.26 The limited information about the impact of procurement policy on the 9 categories laid down in Section 75 of the NI Act has been noted by the Department. As a result of this policy review, better management information systems and data on public procurement will be developed. The Department will monitor the impact of the policy generally and in relation to Section 75 obligations and it will give consideration as to whether a further equality impact assessment will be required in 3 years' time.

Conclusion

2.27 Having considered a wide range of legal and practical issues, including possible alternative policies, the Department is of the view that at this time, these proposals are the most effective way of promoting equality of opportunity in this policy area.

REVIEW TEAM MEMBERS

- Mr David Ferguson, Director, Corporate Services Group, DFP (Chairman)
- Professor Chris McCrudden, Oxford University
- Mrs Jennifer Mawhinney, Head of Procurement, Shorts Plc
- Professor Andrew Erridge, University of Ulster
- Mr Nigel Smyth, Director, CBI
- Mrs Teresa Molloy, Regional Supplies Director, Central Services Agency
- Mr John Kelly, Director of Operations, Water Service, DRD
- Mr Billy Walker, Chief Executive, Construction Service, DFP
- Mr David Court, Chief Executive, OGCBuying.Solution, HMT
- Mrs Mary Bunting, Director, Equality Unit, OFMDFM
- Mr Will Haire, Director, Economic Policy Unit, OFMDFM

LIST OF ORGANISATIONS WHICH RESPONDED

1. Construction Industry Group
2. Construction Employees Federation
3. Construction Industry Training Board
4. Royal Institute of Chartered Surveyors
5. Confederation of British Industry (CBI)
6. Education and Library Boards
7. Housing Executive
8. Department of the Environment
9. Community Evaluation Northern Ireland (CENI)
10. Brian Brannigan Planning and Design
11. The Royal Hospitals
12. Women's Support Network
13. Anti-discrimination Branch, OFMDFM
14. Unison
15. Northern Ireland Public Service Alliance (NIPSA)
16. Equality Commission
17. Committee on Administration of Justice (CAJ)
18. Northern Ireland Women's European Platform (NIWEP)
19. Institute of Management Consultancy (IMC)
20. Confederation of Associations of Specialist Engineering contractors (CASEC)
21. Construction Industry Group – Professional College
22. Sinn Fein
23. Belfast Education and Library Board
24. Quarry Products Association
25. Department of Regional Development
26. Department of Finance and Personnel Assembly Committee