

Promoting Supplier Diversity in Development Procurement



Acknowledgements

This report and toolkit could not have been completed without the assistance and guidance of the steering group comprising:

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The steering group wishes to thank the individuals and organisations who contributed time and information to the project; in particular, the housing associations that responded to the questionnaire and submitted case study material, and representatives from the private and voluntary sectors who were willing to be interviewed about their approaches to supplier diversity.

The guide was researched and written by Helen Cope of Helen Cope Consulting Ltd with Rebecca Rees of Trowers & Hamblins Solicitors. The London Housing Federation funded and disseminated the guide.



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Photographs throughout courtesy of Haig Homes, Genesis Housing Group, Community Housing Group, Notting Hill Housing Group, Aldwyck Housing Group, Poplar HARCA, Affinity Sutton, East Thames Group and Network Housing Group.



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Part 1: The background and context

1. Introduction

“Small and medium enterprises form the basis of the (construction) industry and are probably the principal entry point for apprentices and trainees. Weakening that foundation could threaten the stability of the whole edifice.”¹

Bill Rabbetts, former Chair of the National Federation of Builders and Chair of the Strategic Forum SME Working Group established in 2006

Every year housing associations invest up to £3bn procuring services, works and supplies for new developments. But are associations excluding small and diverse businesses in their search for cheaper prices and longer contracts?

Small and medium enterprises (SMEs) and ethnic minority-owned businesses (EMBs) are often overlooked in the rush to meet efficiency targets, but smaller suppliers can present an exciting opportunity for housing associations: they are often locally based and more flexible, they can come up with innovative ideas and services and, by hiring employees, contractors, suppliers or service providers from their own community, associations can help revitalise local economies and support small businesses in their region.

Equality and diversity targets are already deeply ingrained in housing association management, and the same approach must now be taken to promote supplier diversity.

This guide offers a framework to delivering this diversity, concentrating on four aspects of procurement practice:

1. Clear and challenging expectations of contractors and consultants that are regularly monitored and reviewed
2. Support for smaller suppliers, including mentoring and get-to-know-you buyer/supplier events
3. Reconsideration of requirements in Development Framework Agreements and other forms of contract in relation to supplier diversity
4. Ensuring that expectations are delivered by main contractors and passed down the supply chain to sub-contractors.

Housing association development staff should consider their current performance in this area and take action as set out in this guide, monitoring and reviewing progress and reporting regularly to their board.

Definitions

Definition of small and medium enterprises

For the purpose of this guide, a small enterprise is taken to be a business which has 0-49 full-time equivalent employees and either a turnover of up to £6.9m per annum or a balance sheet total of up to £6.9m.²

A medium enterprise is a business which has 50-249 full-time equivalent employees and either a turnover per annum of £34.3m or a balance sheet total of up to £29.4m.

Small and medium enterprises (SMEs) are an important factor in UK business.³ There are 3.75 million SMEs of which 1.5 million are sole traders. This represents around 99 per cent of all UK businesses. SMEs also account for 55.6 per cent of employment and 52 per cent of turnover in the UK, of which construction turnover represents over £100bn.

Definition of supplier diversity

This guide adopts the Greater London Authority (GLA) Group's definition of supplier diversity:

A 'diverse' supplier is a company/trader which is at least 51 per cent owned, controlled or operated by one or more individuals who are members of an ethnic minority group or under-represented group. These include companies owned or led by:

- women
- disabled people
- lesbians, gay men, bisexual and transgender people
- older people (over 60)
- young people (under 24).

In this guide the term SME can include minority-led businesses.

¹ Bill Rabbetts, *Tell us where it hurts*, Building Magazine 19.01.07 p.36

² Full-time equivalent includes the hours of part-time staff but with the aggregate of part time hours converted into what would be the equivalent number of full-time posts.

³ Small Business Friendly Concordat: Good Practice Guidance, ODPM/DTI/LGA (2005)

Background

In order to become more efficient, housing associations, like many local authorities, are simplifying their tendering processes. Instead of going out to tender for a number of small and medium sized contracts, they are rolling contracts together into a Development Framework Agreement which can last for up to four years, or other strategic procurement arrangements. It is often said that SMEs are too small to take on these contracts, owing to the overall size of the contract and the long-term requirement, and are consequently overlooked. This guide shows this does not need to be the case.

The report is not a guide to equality in public sector procurement – several of which already exist, as noted later – but concentrates on supplier diversity, a previously neglected area of practice. We hope to show how associations can drive a process that will enable more opportunities for SMEs in London.

Research carried out by the Working Lives Research Institute at London Metropolitan University on behalf of the GLA notes that 'housing new build, renovation, repair and maintenance work offers some of the most immediate opportunities for promoting diverse workforces and minority-led SMEs, but some Arms Length Management Organisations (ALMOs) and housing associations have not developed this potential fully.'⁴

The report, called *The Construction Industry in London and Diversity Performance*, recommends the need for further work with London Councils, the Housing Corporation, the G15 group of housing associations, the National Housing Federation, the National Federation of ALMOs and other public sector forums on standard guidance for incorporating diversity into public procurement and contract management across London.

This guide illustrates what housing associations can achieve, but does not argue for any distortion of the market or deviation from 'value for money principles' in order to facilitate supplier diversity. There are approaches that can be adopted to enable further progress to be made in promoting supplier diversity, working with private sector and other development partners.

Race equality and equal opportunities legislation has been on the statute books for nearly 40 years, but there is a consensus that not enough has been achieved, particularly in the field of procurement.⁵ Recently the Office for Government Commerce and the Commission for Equality and Human Rights published general guidance on achieving equality in procurement.

Although some advice is available on development procurement, the market has changed considerably in recent years. The legal framework for diversity in development procurement is outlined at Appendix 1.

The housing association sector in London spends millions of pounds every year on contracts with private and voluntary organisations for goods, works and services. The impact of housing associations, particularly on the regeneration of urban areas, is far greater now than it was even a decade ago. It is therefore more important than ever that additional sustainability gains are achieved. By engaging with SMEs to ensure that the purchasing power of housing associations and their developer partners contributes to local economies, procurement practices have broader impacts.

Delivering diversity in development procurement is resource intensive, but it is not a new issue for housing associations. For many years they have, through the traditional routes of procurement, included contract clauses which highlight the importance of contractors adhering to their obligations under the Race Relations and Equal Opportunities Acts. Diversity in the procurement of housing maintenance contracts has made some progress over the last decade, but in development it has been harder to achieve.

The good practice collected here shows that many housing associations and their development partners are already delivering supplier diversity, despite the challenges and other pressures on the procurement process.



⁴ *The Construction Industry in London and Diversity Performance*, GLA (February 2007)

⁵ See for example, Department for Work and Pensions Review of Race Equality and Public Sector Procurement (July 2005)

Barriers to supplier diversity

The views of the associations

Housing associations developing in London were surveyed as part of the research that has informed this guide, and were asked what barriers they perceived to delivering greater supplier diversity in development procurement. Answers included:

- SME's inability to cope with the scale and complexity arising from the move to larger contracts
- A perception that working with SMEs is incompatible with 'value for money' principles
- Diversity not integrated into procurement approach and therefore seen as an 'extra'
- The tendering of projects understandably tends to focus heavily on the commercial aspects of scheme delivery rather than issues such as the diversity agenda
- The drive to reduce costs and to guarantee delivery whilst improving quality inevitably favours larger firms with established track records and more resources
- Larger consortia or organisations that can provide cost savings may not necessarily be the most diverse organisations
- The impact of partnering - associations generally procure work through fewer contractors and commit larger proportions of available work to them
- The European Union (EU) procurement regulations (as explained further below)
- Modern methods of construction shifts work away from smaller sub-contractors
- Main contractors are not acting proactively through their supply-chain, so even though they may have effective policies and procedures, their sub-contractors are not always required to demonstrate the same commitments
- Section 106 planning gain agreements make up a large part of housing association development programmes in London and leading developers may be unwilling to change their standard procurement arrangements to accommodate diversity.

Other barriers include: the reduced housing association involvement in refurbishment contracts of street properties; reduced contract opportunities for smaller traditional builders as large scale new-build development becomes the norm.

Housing associations are exposed to increased commercial risk – developments increasingly include elements of commercial activity (private sale, commercial properties) to cross-subsidise social housing elements – and this alone may lead housing associations and private developers to be less willing to use firms that are not tried and tested.

EU procurement regulations

The requirement for associations to comply with the EU procurement regulations has further exacerbated this position over the last two to three years. The nature of these all-embracing selection processes has disadvantaged smaller firms in terms of available resources and experience of tendering for work via these structured, formal procedures (see Part 2 Section 3).

Housing associations generally procure work through fewer contractors and commit larger proportions of available work to them. Capacity and effectiveness requirements tend to lead to use of larger traditional firms.

Partnering has generally led to an increase in continuation contracts, based upon experience of previous projects and the principles of value for money and continuous improvement. This has reduced the opportunities to include new or previously untried firms on tender lists too.

Aggregation as a barrier

The practice of aggregating smaller contracts into larger ones in order to attract the market can be divided between 'voluntary' and 'compulsory' aggregation.

Voluntary aggregation is aggregation that is not required by the EU procurement regulations, but is undertaken by procurement consortia or individual housing associations in order to try to increase the attractiveness of a contract to the wider market place and/or achieve value for money efficiencies.

Voluntary aggregation can also be achieved by lengthening the duration of the contract, in order to procure a partnering relationship that may last up to four years.

Both of these voluntary aggregation methods are encouraged by two UK government policies – the efficiency drive pursuant to the Gershon report and the requirement for goods, works and services to be procured along the lines of the 1998 *Rethinking Construction* report supported by Latham and Egan.

Clearly there is a need for policy makers to take into account this clash of agendas: diversity, support for SMEs and sustainable procurement against the efficiency and partnering agendas. Compulsory aggregation is considered in Part 2 Section 3.

It is more likely that the imposition of these conflicting UK government policies leads to the exclusion of SMEs from housing association procurement processes, rather than the compulsory application of the EU procurement regulations.

The views of SMEs and EMBs

Research supported by Amicus Horizon and East Thames Group found that SMEs and EMBs experienced and perceived the following barriers to greater involvement in housing association development procurement opportunities:

- Client attitude to EMBs. There are few examples of partnering arrangements with EMBs; tendering is still driven by the lowest price, which the research notes as 'remarkable as it is contrary to the *Rethinking Construction* agenda which has generally been embraced by housing associations'
- Problems with contract administration, payment delays and poor payment processes exacerbated by contractors having to purchase materials in advance, which can adversely affect cash flow
- Uncertainty over future workload is the most important issue which holds SMEs and EMBs back.⁶

Sustainable procurement

Housing association investment in neighbourhoods through development and regeneration procurement should try to make the most of every pound that is spent; attempting to ensure that it is used to revitalise the local economy. Too often, the additional benefits of investment

are not realised. Money does not circulate into the local economy unless local employees, contractors and suppliers benefit from this investment.⁷

Public procurement, including that undertaken by housing associations, should be used to advance wider government policy initiatives such as the development of markets for SMEs and sustainable communities. The pursuit of efficiency through larger contracts and fewer development partners is in danger of excluding more and more SMEs from housing association development procurement.

There are many benefits for larger organisations, such as housing associations, of having access to a diverse supplier base that includes SMEs and minority ethnic businesses, as outlined in Part 2 Section 3.

While supplier diversity is increasingly recognised as important, housing associations face a number of questions. How should procurers identify and contact potential SME and EMB suppliers? How should they resolve the apparent conflicts between diversity in the supplier base and achieving efficiency savings in procurement and lower costs in development? Potential risk and resource implications for smaller suppliers must be evaluated, monitored and managed.

This guide addresses these and other issues.



⁶ *Supporting BME Contractors*, DTI DENNE University Kent and Centre for Performance Improvement (2004)

⁷ *Plugging the leaks: Making the most of every pound that enters your local economy*, New Economics Foundation (2002)

2. The business case

The business case is both social and economic.

SMEs:

- can offer cash savings while providing quality and efficient service
- are frequently close at hand and locally based
- may have better access to hard-to-reach groups
- may attach more importance to doing business with your organisation
- increase competition which may reduce the costs of procurement
- enjoy lower administrative costs and overheads which can, in some instances, result in lower costs
- offer additional local resources on which to draw
- offer both capacity and the ability to deliver
- have short management chains which can lead to quicker responses.⁸

Most importantly, smaller contractors are more likely to have a stake in the community and will continue to identify with the projects they deliver, often with a greater sense of ownership than a non-local main contractor.

SMEs are often locally based and may live in the local community; contracts with them may bring benefits to the wider community.

SMEs in the construction sector

SMEs in private sector construction account for 68 per cent of all turnover. They also account for 83 per cent of employment.⁹ Medium-sized enterprises account for 11 per cent of that turnover and nine per cent of employment. Construction turnover amounts to some £100bn across the UK.

London's diverse economy

In London, nearly a third of the city's population is from black, Asian or other minority ethnic groups. Women make up half of the workforce. In 2004, ethnic minority owned businesses (EMBs) generated total combined sales of £90bn, making a significant contribution to London's economy.¹⁰

A commitment to diversity provides opportunities for business growth, and a diverse population is one of London's greatest strengths:

- Londoners come from over 220 countries
- Londoners speak over 300 languages
- One in five Londoners are disabled
- It is estimated that at least half a million London residents are lesbian, gay, bisexual or transgender
- By 2011, almost a third of Londoners will be aged over 45
- By 2016, 7 out of 10 new jobs in London will be filled by women.



⁸ *Smaller supplier Better value?*, Small Business Service (SBS) (2005)

⁹ *Study of the Benefits of Public Sector Procurement from Small Businesses*, SBS/DTI (2005)

¹⁰ *Diversity Works for London*, LDA (undated)

Housing associations and supplier diversity

The London Development Agency (LDA) believe that supplier diversity gives businesses the opportunity to:

- move into new markets and source a wider range of customers
- create an inclusive working environment, motivating existing employees and improving productivity
- find better suppliers and new investors gain a competitive advantage by providing consistently better services to existing customers
- find and retain skilled and versatile employees
- increase creativity and innovation
- increase penetration of overseas markets in a global economy.¹¹

The LDA project Diversity Works for London states that, in order to ensure a business is performing to its full potential, diversity must be a core value and part of the business planning process. Diversity gives business the opportunity to grow, and the challenge for every company operating in London is how to utilise this massive potential for the benefit of their business.¹²

Diversity in development procurement is central to the delivery of sustainable communities. It enables housing associations to deliver on their commitment to equality of opportunity and diversity. There are also real economic advantages to be gained from a diverse supplier base comprising SMEs.

The benefits to organisations, such as many housing associations, of having a diverse supplier base that includes SMEs and EMBs has been well-documented by authorities such as the Office of Government Commerce (OGC).

Sustainable development

The UK government has underlined its commitment to sustainable development. Sustainable development embraces:

- social progress which recognises the needs of everyone
- effective protection of the environment
- prudent use of natural resources
- maintenance of high and stable levels of economic growth and employment.

Decisions to invest in housing developments can have quite an impact on all of these issues. Housing associations have a duty as major clients of the construction industry to embrace sustainability through its construction processes, at all levels.

Projects should take into account all three pillars of sustainability: social, economic and environmental. Social sustainability identifies the needs of individuals and considers their well being in the context of construction. It is often the least considered area but it has the potential to bring the most benefits. It covers a wide range of issues from health and safety, education and training through to social inclusion and eradicating poverty.

Carefully planned new developments can rejuvenate local economies: improving access to services, encouraging new businesses and creating new jobs. The UK government's commitment to sustainable communities reinforces the need for a flourishing local economy, supported by adequate infrastructure.

The SBS guide *Sustainability – Achieving Excellence in Construction Procurement* (2007) sets out an approach to delivering sustainable construction. Supporting local SMEs can contribute to this aim.

The use of labour from the local community also offers travel benefits and contributes to sustainable development.



¹¹ Ibid

¹² Ibid

Part 2: Some solutions

Delivering supplier diversity: a guide for housing associations



These four methods are explored in the following pages, each section including examples of good practice and a checklist of action points.

Diagram 1: Supplier diversity in the development procurement process – at a glance



1: Expectations of consultants and contractors

Overcoming the problem

The best place to start is with the contractors and consultants that your organisation works with. Through invitations to tender and contract clauses, associations are able to set out their diversity requirements. While housing associations have been doing this for some time, these obligations are not necessarily passed on to sub-contractors. Many of the contracting firms used by associations do not employ or deliver work directly but rather operate through sub-contractors. Section 4 shows how main contractors can assist in delivering diversity through the sub-contracting process.

Main contractors, sub-contractors and consultants should be expected to assist in meeting a housing association's diversity targets through two key approaches:

- Internal approaches to equality and diversity in relation to employment and construction training
- Working with the housing association to widen the supplier diversity base.

A housing association should question the supplier to find out what its contractors and consultants are doing to actively promote diversity. This is a requirement of the Housing Corporation, and should be quite familiar territory to many housing associations.

Contractors and consultants should be aware that your organisation adheres to the Housing Corporation's Regulatory Guidance 2.7.7, which states that 'as a criterion for award of work or contracts and a condition for doing business, associations should pass on race equality requirements in respect of staffing, customer satisfaction, and dealing with racial harassment... to their consultants contractors and suppliers.'

The Race Equality Code of Practice for Housing Associations (2002) specified that the promotion of race equality should be apparent across all housing associations' business activities, regardless of whether associations deliver services direct or if they sub-contract elements of their work to contractors or consultants.

Outcomes include:

- General recognition by contractors and consultants that to work in the housing association sector they need to be able to demonstrate how they are promoting race equality
- An increase in the diversity of the contractor and consultant workforce working in the sector.

Statutory Code of Practice on Racial Equality in Housing

The Code provides a framework and a set of principles that housing associations can seek to apply to all aspects of diversity policy.

The Code took legal effect on 1 October 2006 and replaces the CRE's previous statutory codes of practice for rented and non-rented housing.

It recommends that, as part of the tendering process, housing organisations should give notice that contractors will be expected to demonstrate their commitment to racial equality, both in principle and practice, when this is relevant to the subject of the contract.

The Code also notes that housing organisations should make sure they have 'effective systems for evaluating racial equality requirements, and that their own tendering processes are fair and transparent; for example, have ethnic minority businesses been given the opportunity to apply to be placed on any tendering lists?'

Housing associations should be able to advise contractors as to what is expected of them in the area of racial equality, and should make this clear in the contract. The Code also recommends that 'housing organisations should try to reach an agreement with their contractors as to how any racial equality requirements will be met by their sub-contractors'.



The National Change Agent initiative

The National Change Agent initiative, run by Davis Langdon and Trowers & Hamblins on behalf of Communities and Local Government, has produced new opportunities for closer engagement with smaller sub-contractors and suppliers. Consortia of social landlords procuring together are encouraged to consider options that include:

- Inclusion in tender documents and contracts a requirement to work jointly so as to appoint sub-contractors and suppliers that meet not only criteria of best value, but also criteria for sustainability that can include local training and employment
- Providing the opportunity for smaller sub-contractors and suppliers to be introduced to major social housing programmes, after EU procurement of main contractors.

Employment of own workforce

Standard contract arrangements with contractors and consultants should include the adoption of the Respect for People Toolkit.

The Toolkit has been developed by the Housing Forum as part of the *Rethinking Construction* agenda and is designed to improve conditions in the construction industry and to encourage contractors to take responsibility to improve the industry.

It comprises a range of toolkits of which the Equality and Diversity in the Workplace Toolkit is the most relevant to this guide.

Supplier diversity

Associations should work with others to develop an approach that facilitates and enables contractors and consultants from diverse groups to have a fair opportunity to bid for contract work in the sector.

Construction training

In practice, sub-contractors are the most important ingredient in construction training, as many construction firms do not employ directly. Sub-contractors are the direct supervisors of particular skills and the most likely future employers.

Construction training often involves the main contractor introducing trainees to site for use by sub-contractors. Ideally, on larger contracts, this should be a consideration of funding and/or a section 106 requirement within the planning system and should also be considered across a programme agreement.

Section 3 on Development Framework Agreements offers a form of words to enable local labour (which may often be diverse given the areas in which housing associations operate in London), to be included as a requirement without contravention of EU procurement regulations.



Good practice

Diversity Policy

An extract from **Southern Housing Group's** diversity policy:

The Group recognises the challenges of working within EU procurement legislation, but is committed to ensuring maximum benefit is derived from its arrangements and relationships with suppliers, contractors and consultants, for the diverse communities to whom it delivers services. It aims to deliver effective promotion of equality and diversity requirements in their work.

It will:

- Identify all professional relationships where there are real possibilities of influencing the outcomes and quality of service delivery to its customers
- Ensure new procurement arrangements include assessment of equality and diversity in service delivery as part of tender assessment arrangements
- Agree standards and monitoring arrangements with partner contractors and consultants to assess outcomes and identify where improvements can be made in relation to equalities
- Work with contractors and suppliers who provide services in people's homes to ensure they are sensitive to different needs, and that their work reflects the Group's commitment to diversity and equality
- Explore opportunities for joint initiatives, including training, selection and employment initiatives. Which include equalities and diversity outcomes
- Work with other housing associations and partners to develop better practice and promote best practice within the Group.

Policy on labour from local communities

In addition to requesting diversity statements as part of the contractor selection process **Gallions Housing Association** asks contractors to sign up to Gallions' Local Labour, Training and Employment Policy. Although the policy is focused on sustainable communities, it also addresses issues of equality and diversity. This seeks to ensure that the contractor uses a local workforce that reflects the local community. Gallions monitors and reviews regularly updated statistics regarding ethnicity, age and gender of the workforce.

There is also a requirement for the contractors to issue a written statement that is conveyed to all site visitors, indicating their full commitment to ensuring equal opportunity in employment and training for persons and businesses.

Throughout the contract period the contractor is required to collate information showing the ethnic, gender and disability profile of people recruited. This is submitted to the local authority on a monthly basis.

One contractor, the Durkan Group, has developed a new collaborative approach for education and training. Working with a local college, they assist post-16 year olds into apprenticeship schemes; its sub-contractors are encouraged to engage in this opportunity too. Durkan also works with 'Women in Construction' and has been commended by the Equal Opportunities Commission for their working practices.



Reporting to the board on diversity performance and construction training initiatives

Notting Hill Housing Group requires contractors and consultants to have diversity policies. Annual monitoring is carried out to check whether their policies are put into practice in the selection of their office and site staff and their supply chain. This is done by sending out questionnaires to obtain records and is followed up by holding individual, face-to-face review meetings. The results are then reported to Notting Hill's board.

Construction Training Initiative (CTI)

Notting Hill Housing Group's construction training initiative has won several awards, including best practice in promoting equality and diversity in the construction industry. It is one of the best known of the many schemes offered in London.

Set up in 1995, it offers a two year, accredited construction training scheme. It links unemployed people looking for a job with contractors seeking people willing to train.

The scheme offers places for unemployed people over 18 years of age who live in Barney, Brett, Hammersmith and Fulham, Hounslow, Kensington and Chelsea.

Benefits of CTI include:

- Support towards securing a college place.
- Financial help with college fees, fares, books and stationery.
- Free professional tools and equipment.
- Access to useful work placements with reputable contractors.
- The opportunity to earn as people train.
- Free health and safety tests.
- Professional advice, guidance and support.
- Employment and training events.

Since inception Notting Hill has supported 700 people into work, 40 per cent of whom were from black and minority ethnic communities.

Complying with Respect for People

Servite Housing expects contractors to comply with the Respect for People Toolkit. It launched a framework agreement in January 2007 which contains an assessment framework for equality and diversity.

The equality assessment will examine a contractor's commitment to equality in terms of employment, service delivery and its relationship with other sub-contractors. The framework agreement will contain targets for work with SMEs, specifically EMBs and women-led SMEs.

As part of the equality assessment, contractors will be expected to carry out Equality Impact Assessments on relevant policies, practices and procedures to eradicate any inappropriate practices.

Invitations to tender

The following extracts from **East Thames Group's** constructors invitation to tender illustrate how diversity can be accommodated:

'Our residents and customers come from a wide diversity of ethnic, cultural and religious backgrounds and include people who may be vulnerable. How will you ensure you have the necessary skills to respond to these groups and provide appropriate liaison and communication?'

Employment and Training for Local Communities

'How will you ensure your labour force reflects the ethnic and cultural diversity of the local neighbourhoods where you work? Describe your methods for monitoring workforce diversity and the strategies you employ to enhance this.'

Check list of action points

1. Expectations of consultants and contractors

Action points	✓
Send details of your diversity policy to all contractors and consultants.	
Ask all contractors and consultants tendering for contracts to complete a monitoring questionnaire.	
Ask all consultants and contractors tendering for contracts to supply details of their equality and diversity strategies, policies and frameworks. Obtain some hard evidence of their achievement.	
Include specific and relevant conditions in the specification about meeting the diverse needs of your customers and promoting equal opportunities, and evaluate tenders against these conditions.	
Include standard equalities clauses in all contracts.	
Include requirements on training, apprenticeships and work placements to encourage a more diverse workforce.	
Ensure that contract monitoring includes equalities issues.	
Regularly monitor contractor and consultant staff profiles, recruitment and employment policies, and staff profiles within hierarchies.	
Monitor, encourage or assist on apprenticeships/training opportunities/work experience which encourage diversity within the firm.	
Ensure that diversity training is available to all staff, covering both cultural awareness and expected behaviours.	
Meet annually with consultants and contractors to agree targets for staff ratios, policies and practice and to review performance.	
Check what opportunities are on offer to encourage local people and people from diverse backgrounds into construction training.	
Use local labour where appropriate or possible. The breakdown of local staff should be monitored and ensure this stipulation is EU-compliant (see Part 2 section 3).	
Ensure that site facilities address the range of diversity issues including access, separate facilities for women or acceptable unisex facilities, and inspect them regularly.	
Check that site behaviour is acceptable. Insist that contractors have acceptable behaviour standards on site and appropriate complaint/disciplinary avenues embedded in the organisation. This should also include behaviour towards professional staff visiting sites.	

More information

The Commission for Racial Equality (CRE)

St Dunstan House, 201-211 Borough High Street, London SE1 1GZ
Tel: 020 7939 0000 (Private sector)
www.cre.gov.uk

The Disability Rights Commission (DRC)

Fox Court, 14 Gray's Inn Road, London WC1X 8HN
Tel: 0845 762 2633
www.drc-gb.org

The Equal Opportunities Commission (EOC)

36 Broadway
London SW1H 0BH
Tel: 0845 601 5901
Email: info@eoc.org.uk

References

- *Race Equality and Procurement in Local Government: A guide for authorities and contractors*, CRE (2003)
- *Race Equality and Public Procurement: Briefing for suppliers*, CRE (2003)
- *Race Equality and Public Procurement: A guide for public authorities and contractors*, CRE (2003)
- CRE Statutory Code of Practice on racial equality in Housing – England (2006)
- *The Construction Industry in London and Diversity Performance*, GLA (February 2007)

Websites

The National School for Government offers a framework for delivering excellence in diversity:
www.nationalschool.gov.uk/organisational_development/Diversity

www.constructingexcellence.org.uk/zones/peoplezone/respect/respecttoolkits

For more information on Notting Hill's Construction Training Initiative email cti@nhhg.org.uk

To access more information related to Women in Construction, including details of organisations and initiatives visit www.constructingexcellence.org.uk

2: Support for SME suppliers

Overcoming the problem

A report for Business Link for London notes that almost all SME businesses recognised that the public sector was an important market place.¹³ There was, however, a perception by SMEs that purchasers lacked awareness and experience of dealing with SMEs.

Public sector bureaucracy was identified as a major cause of tendering failure among SMEs. These barriers relate to several fundamentals of the process from the role of approved supplier lists to the use of pre-qualification questionnaires (PQQs).¹⁴

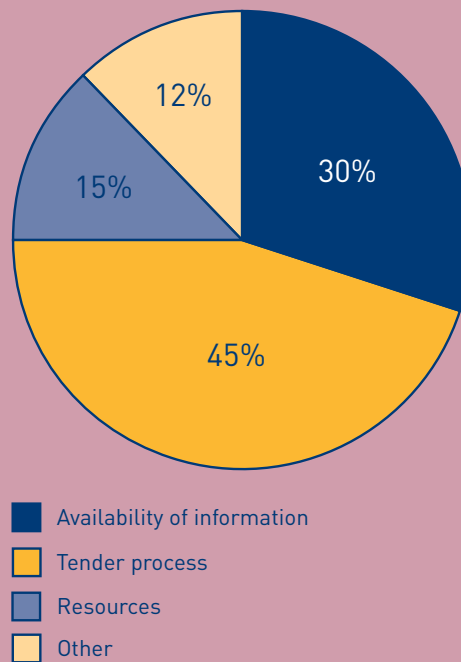
A recent report has found that there are a number of challenges for minority-led businesses (as for all SMEs) when tendering for private and public sector contracts including:

- The procurement process can be quite complicated
- Limited time and manpower
- Those who do attempt to tender can then be put off by pre-qualification questionnaires which require them to demonstrate several years of experience.¹⁵

Other reports have highlighted different barriers, including:

- Not being able to find out about procurement/contract opportunities
- The impact of the move by housing associations/public sector bodies to larger contracts and framework agreements
- Believing that public sector bodies perceive a greater risk with smaller firms¹⁶
- Poor payment processes impacting on tight cash flows.

Chart 1.1:
Barriers to getting/delivering work



These challenges were confirmed by an SME supplier event held by the East Thames Group in November 2006, as highlighted in chart 1.1.

'Other' includes: jargon; not knowing who to contact; paperwork; turnover; selection criteria; EU procurement rules; framework contracts.

35 per cent of attendees noted the need for assistance with developing their capacity to undertake larger contracts. 18 per cent required specific business support and 15 per cent assistance with developing modern apprenticeships within their organisations.



¹³ *Procurement stories: entrepreneurs on the procurement experience*, Business Link for London (2003)

¹⁴ *Ibid*

¹⁵ *Business Action on Supplier Diversity: Practical Case studies from some of the UK's leading Companies*, BIC/ LDA (2007)

¹⁶ *Smaller supplier ...better value? The value for money that small firms can offer*, OGC (2005)

Procurement Strategy

The housing association's development procurement strategy should be reviewed in the light of these challenges faced by SMEs. Consider the appropriate interventions that your organisation could introduce into its procurement processes that could assist supplier diversity.

A useful first stage is to agree a statement of principles. The GLA statement (for general procurement) is reproduced in the Good Practice section, although this applies to all procurement not just development. The aim of the statement should be to commit to supplier diversity and overcome the barriers as part of the procurement process.

Clearly, in deciding the approach there is a need to balance the aim of supplier diversity with other objectives in development such as economy, efficiency and levels of risk. These are not mutually exclusive, however.

Local procurement

As noted earlier, supplier diversity can help to achieve other community objectives, both social and economic. Sustainability strategies and community investment policies can contribute to supplier diversity too. Diversity in procurement needs to be set in the context of local procurement. A local procurement approach is outlined in the Good Practice section. By delivering local procurement on a borough or sub-regional basis, a supply chain can be identified that will include local SME suppliers and those led by ethnic minorities. Local communities can benefit from this approach, particularly where companies adopt a commitment to delivering a diverse workforce and employ local people.

The Office of Government Commerce (OGC) suggest a number of ways to open up a market for SME organisations, including:

- Improving access to tender opportunities
- Looking at administrative processes, for example, the impact of the pre-qualification questionnaire (PQQ)
- Putting out information about how everything works
- Encouraging other routes into the market e.g. through use of larger contractors who enable SMEs to act as sub-contractors
- SMEs can be encouraged into the procurement process by bidding as part of a consortium.

Training

In addition, it is essential that supplier diversity and diversity in development procurement become part of the mainstream activity of the association. Internal training of staff might be required to ensure that development staff and specialist procurement staff are aware of the issues, processes and how to deliver supplier diversity.

Procurement processes

Housing associations should commit to considering supplier diversity at each stage of the development procurement process, as illustrated in diagram 1 on page 11. This includes:

- contract requirements
- pre-qualification questionnaire (PQQ)
- reviews of PQQs
- invitation to tender
- tender evaluation
- tender selection
- on site
- monitoring contracts.



Fair Payment

The Fair Payment Charter and associated guidance agreed by the Public Sector Construction Clients' Forum (PSCCF) in December 2006 will be implemented by all public sector clients throughout their supply chains by 1 January 2008 and it is anticipated that a number of the points within the Charter may be adopted earlier during 2007. Payment delays are reported as one of the most important obstacles facing SMEs.

Fair Payment Charter – key points

- Companies have the right to receive correct full payment as and when due. Deliberate late payment or unjustifiable withholding of payment is ethically not acceptable.
- Fair payment will apply equally between the client and lead contractor, and throughout the supply chain.
- The process will be transparent; there should be certainty of how much will be paid, and when it will be received.
- Companies will consider, where appropriate, operating relevant contracts on an open book basis.
- The correct payment will represent the work properly carried out, or products supplied, in accordance with the contract. Any client arrangements for retention will be replicated on the same contract terms throughout the supply chain. Any withholding of payment due to defects or non-delivery will be proportionate and demonstrably justified in line with arrangements made at the time of contract.
- To ensure effective and equitable cashflow for all those involved, all contracts will provide for regular payments and have payment periods not exceeding 30 days.
- In order to avoid payment delays, the client and all supply chain members will agree payment procedures at the outset of their contracts. Payment will be through electronic BACS transfer and will apply throughout the supply chain.
- Monitoring, auditing and problem resolution procedures will be agreed between the parties.

Concordats¹⁷

All local authorities have signed a concordat to assist SMEs. Contact local authority economic development units for advice on linking up with SMEs. Consider whether you could work on a borough or sub-regional basis to sign some sort of concordat to assist SMEs, possibly with other housing associations.

Access to opportunities for SMEs

Consider how opportunities are publicised:

- A key source is advertising through trade or regional press
- Use your website for details of opportunities and give contact details
- Make sure that you use clear and concise language
- Try to ensure that the timescales are long enough for SMEs to respond.

A preferred approach for developing a data base of suppliers

All housing associations maintain supplier lists, even in these times of Development Framework Agreements and partnering. Make sure that this is up-to-date in relation to smaller suppliers, that it is easy to find out how to get on the list, and be open about the process and your requirements. Internal resources may need to be set aside to do this.

External sources of information

Local Business Link and Economic Development Units of local authorities will assist in identifying smaller suppliers as will the local Chamber of Commerce.

Bodies such as Supply London, Constructionline and the London Equal Opportunities Federation (LEOF and Safebuild.com) can offer some assistance in identifying potential suppliers and in training and development processes too (see the Good Practice section).

Mentoring and support for SMEs

Attempt to form links with SME firms; train and educate them in the association's procurement approaches and requirements. As long as the relationship is EU-compliant, or is put out to an EU compliant tender when the works value exceeds the relevant EU procurement thresholds, there is no barrier to this sort of assistance.

Then, once a supplier has reached the interview stage and/or beyond, consider tracking their progress and offer additional help. Internal departments could assist with IT or financial skills, business development and understanding housing association procurement generally. Recruit larger contractors to help (see Part 2 Section 4 for more on this).

¹⁷ See the Small Business Friendly Concordat: Good Practice Guidance, DTI/ODPM/LGA (2005)

Focus groups of SMEs can assist in determining the sort of help needed. Encourage partnership working between some of the SME contractors and consortium bidding so that skills and strengths can be pooled.

Consider introducing an SME mentoring scheme to encourage larger companies to pass on experience, expertise and systems to the smaller organisations.

There is lots of help around. There are publications from the Small Business Service and the OGC that help smaller firms to win public sector contracts. Some examples are given below.

Business Link for London is responsible for delivering an initiative known as Supply London. The Initiative is funded through the London Development Agency and the Cross River partnership. It offers a range of activities aimed at assisting small businesses to take advantage of commercial opportunities available through the public and private sector supply chain in London. The Supply London service offers a programme of workshops and it also provides advice and action plans to help implement the processes that are required for success.

www.businesslink4london.com

Making Mentoring Work – A Toolkit for Mentors from Buying a Better London. If small businesses are to be able to tender effectively for development procurement contracts they need assistance in tendering capability, marketing, accounting information, company policies, recognising opportunities, and procedures.

This particular mentoring tool kit is about the provision of one-to-one advice and guidance underpinned by in-depth understanding of the problems SMEs face in improving their businesses.

www.lcpe.gov.uk/BME_SME/Buying_A_Better_London.asp

Changing the Face of Construction is an independent project which aims to encourage greater diversity across all sectors of the construction industry. It is the first planned construction industry project which sets out to increase the number of women, BME and disabled people in the construction workforce. Changing the Face of Construction provides practical help in consultancy for organisations and individuals wishing to bring about that change.

www.change-construction.org

The Construction Industry Training Board (CITB) also offers help for smaller businesses. It notes that while there is growing support for small construction companies from public and private sector organisations alike, finding the time to benefit from this support can be difficult.

Therefore the CITB is establishing networks of clients, construction companies and business support organisations to guarantee work for firms that invest in business development.

The CITB offers face-to-face support from its national network of training advisers and company development advisors.

www.citb-constructionskills.co.uk



Good Practice

Supporting SMEs in Islington

Newlon Housing Group has worked closely with the **Islington Business Enterprise Team** on the Arsenal stadium development. The London Borough of Islington was concerned to ensure that some of the benefits of the regeneration of the Arsenal area and the development of the new stadium should flow to local companies. The Borough established the Islington Business Enterprise Team and, despite a late start in relation to the Arsenal redevelopment, since 2005 the IBET team has:

- Delivered 120 invitations to tender, all of which relate to the Arsenal redevelopment
- Achieved the local award of 28 contracts worth £7m, of which £3m came out of the Arsenal development
- Achieved £2m local procurement by sub-contractors
- Engaged over 500 attendees from SMEs at workshops and IBET events
- Been involved in 30 different sites across the borough.

In addition to vetting and supporting local businesses for a directory, IBET has also hosted events to encourage the involvement of SMEs in these contracts. Main contractors have been encouraged to ensure that sub-contractors engage with the SME supply chain in the borough.

IBET's record shows that if there is a real commitment to local procurement, diversity in procurement can follow. IBET is supported by the LDA and has set up a similar local procurement unit for the London Borough of Camden, at the request of the LDA, to take advantage of the major developments taking place in the Kings Cross area.

Paying on time

The North River Alliance is asking its framework contractors to extend the payment on time principles applied in its contract with them to the contracts they have with their sub-contractors. It intends to include this as part of its monitoring of their performance under the framework agreement.

Reporting progress to the board

In 2005 **East Thames Group** made a commitment to increase the diversity of its supplier base, increasing spending with EMBs and businesses owned by women and people with disabilities to 25 per cent by 2010. To deliver this it has been proactive in developing new ways of attracting and supporting these businesses.

The capacity of SMEs sometimes hinders their ability to grow and East Thames will be working internally with them to create new opportunities.

To date East Thames has examined and developed internal practices including:

- procurement processes
- Development Partnership Framework
- financial processes
- engaging SMEs in a supplier ('meet the buyer') event.

NEA, a business that has successfully bid for work with a number of local authorities and the LDA, supported the event by providing the attendees with a workshop on PQQ and tender application processes.

Supporting SMEs in Westminster

Notting Hill Housing Group has joined the Westminster Small Minority Business Council (WSMBC) with two partnering contractors providing its responsive repairs service across all general needs stock. It is now preparing to provide mentoring and potential employment for any building-related companies as sub-contractors through these principal contracts.

This process is one which could be, in due course, replicated for development

WSMBC is a support programme based upon a model in Houston USA whereby big business provides mentoring and administrative support for small minority companies and employs them to work under their control. WSMBC has a membership requirement based upon turnover, ethnicity of ownership and an office location in Westminster.

Delivering sustainable construction in Leicester

TREES stands for Training, Regeneration, Education, Employment, and Sustainability.

Founded by **LHA-ASRA**, TREES supports a growing range of subsidiary enterprises.

One example of four separate subsidiaries is Newlife Regeneration & Construction Ltd. Founded in 1999 on the premise that investment in developing, maintaining and refurbishing property could be made to work harder in creating tangible benefits for local people, Newlife now has £9m of orders comprising construction, refurbishment, maintenance and project consultancy. Its objectives vary from area to area, and include community development, job creation, skills development and offering added value delivering services for local authorities and other public bodies.

In Braunstone, Newlife joined forces with Leicester City Council and other partners in an £8.5m refurbishment programme involving 220 former council homes. It consulted the community on work and training needs and has recruited more than 60 local people into the workforce.

Through TREES and the local enterprises it supports, money is flowing into the local economy.

Delivering supplier diversity through direct procurement

Direct procurement is a form of procurement which enables a real partnership to be developed with the local supply chain, including SME suppliers.

In London, there are a number of associations that are following the direct procurement route. For example, Affinity Sutton is working with Avebury International to directly procure affordable homes.

In Bradford direct procurement is being implemented through a consortium of associations. Firebird Joint Venture Company is a partnership between five housing associations – Bradford Community Housing Trust, Accent Group, Leeds Federated Housing Association, Unity Housing Association and Manningham Housing Association (a BME-led association). The aim is to provide affordable housing across West Yorkshire and to provide a high quality construction management service, which allows Firebird Homes and its partners to act as its own developer and contractor.

In addition to creating a partnership with the supply chain – sub-contractors, labour and material suppliers – direct procurement can reduce build cost by 10 per cent when compared with other methods of procurement. It also creates opportunities for employment and training for local people.



Check list of action points

2. Supporting smaller suppliers

Action points	✓
Consider the steps you take to change practices that hamper or prevent businesses run by people from ethnic minority or other under-represented groups from winning contracts, and make sure they are aware of any opportunities, both directly as contractors and indirectly as sub-contractors.	
Review your existing arrangements.	
Implement fair payment scheme.	
Review your approved supplier lists.	
Consider if they are achieving your requirements for supplier diversity.	
Ensure you have relevant information in place regarding potential suppliers.	
Contact external agencies and local authorities if necessary.	
Consider the options in relation to procurement processes to best meet your requirements.	
Consider how opportunities are made known to SMEs.	
Consider advertising in the trade press and through your and others' websites – use plain English and give contacts.	
Plan internal training needs.	
Arrange a supplier 'meet the buyer' event.	
Contact agencies to assist in mentoring and support for SMEs for advice and guidance.	
Consider mentoring opportunities for smaller contractors across the range of internal disciplines such as procurement, finance and other business skills, and explore opportunities for outside assistance with this.	
Develop a strategy to enable smaller contractors to develop smaller sites such as infill schemes, re-conversions and extensions to tackle the need for larger family homes.	
Consider direct procurement – going directly to the supply chain removes the need for a main contractor on some sites (see Good Practice section).	
Consider opportunities for consortium working for smaller contractors.	
Commit main contractors to assisting SMEs (see Part 2 Section 4).	

More information

The Office of Government Commerce (OGC) is an independent office of the Treasury. It works with public sector organisations to help improve efficiency gain better value for money from their commercial activities and deliver improved success from programmes and projects. The OGC has many useful documents about procurement and offers links to organisations that assist small SMEs, including the Small Business Service.

www.ogc.gov.uk

The London Centre of Excellence was established to assist London boroughs to deliver the efficiency agenda and is hosted by London Councils. They are supporting an on-going project called Buying a Better London which aims at 'disseminating and further developing existing good practice around relationships of small and medium sized enterprises (SMEs) and minority ethnic businesses (EMBs), and the economic and social implications of public sector supply chain management'.

[www.lcpe.gov.uk/workstreamsexamplars/buying a better London](http://www.lcpe.gov.uk/workstreamsexamplars/buying%20a%20better%20London)

Constructionline is the UK's largest register of local and national pre-qualified construction and construction related services. It is endorsed by the Department of Trade and Industry. The advantage of Constructionline is that the services are free to procurers.

www.constructionline.co.uk

London Equal Opportunities Federation (LEOF) is a not-for-profit foundation, which has social housing organisations and organisations that are part of central and local government as members. It is set up to facilitate access to member contracts (mainly building contracts) for minority led businesses

Safebuild.com is a national prequalification system to assist in the promotion of minority led businesses nationwide, operated by LEOF.

www.leof.org

Avalon system

In West London there is an internet based system developed by the West London Alliance. The Avalon system makes available an approved supplier list to local authorities through partnerships and is used by Ealing, Hammersmith & Fulham and Camden.

The Centre for Performance Improvement is a research, training and consultancy organisation specialising in the construction industry. Its areas of expertise cover:

- project management
- supply chain integration and procurement
- organisational performance improvement
- partnering and collaborative working
- construction skills training and education

It has published *Supporting BME Contractors: a good practice guide* (2004).

www.c4pim.org.uk/research

Direct procurement

For further information on Firebird and direct procurement contact Manningham HA: www.manninghamhousing.co.uk or Avebury International at: www.avebury.com

References

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- *Small Business Friendly Concordat Good Practice Guidance*, ODPM/DTI/LGA (2005)
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- *Study of the Benefits of Public Sector Procurement from Small Businesses*, SBS/DTI (2005)
- *Diversity works for London*, LDA (undated)
- *Procurement stories: entrepreneurs on the procurement experience*, Business Link for London (2003)
- *Mix Matters: equality and diversity guidelines*, Moss Care (2005)
- *Business Action on Supplier Diversity Practical Case studies from some of the UK's leading Companies*, BIC/ LDA (2007)
- *Smaller supplier ...better value? The value for money that small firms can offer*, OGC (2005)

Websites

www.change-construction.org

www.citbconstructionskills.co.uk/supportingyou/supportingyourbusiness/businessperformance/smallbusinesses

www.islington.gov.uk/Business/ABET/contact_us.asp

3: Delivering diversity through Development Framework Agreements

Overcoming the problem

In promoting sustainable procurement, wider policy areas such as equality, encouraging SMEs, regeneration, fair trade, and developing skills are often seen as extras. But in order to achieve sustainable procurement, inclusion and sustainability indicators need to be built into a housing association's procurement strategy at the outset.

This section offers some guidance on delivering diversity in procurement while remaining compliant with the EU procurement regulations. Official Journal of the European Union (OJEU) Frameworks were identified as a key barrier to supplier diversity,¹⁸ but framework agreements can also provide the opportunity for associations to extend their influence over partners' practices as part of the framework management process.

The EU procurement regulations do not have to prevent SME involvement in development procurement. There are ways, as we have already seen in Section 2 of this guide, to ensure that SMEs are included and assisted to respond effectively and successfully to procurement processes.

The large-scale, long-term nature of contracts which some housing associations place with large companies enable them to set diversity requirements which contractors might otherwise not be willing to meet.

Background to EU Procurement Regulations

The specific EU Procurement rules, as set out for UK contracting authorities in the Public Contracts Regulations 2006 (Statutory Instrument (SI) 2006/5) implements the EU Consolidated Directive (2004/18/EC) which is itself derived from the EU Treaty (together the 'EU Procurement Regulations'). These EU Procurement Regulations concern the letting of works, services and supplies contracts and also covers remedies for breaches of the EU Procurement rules by contracting authorities. Therefore, when considering compliance with the EU Procurement Regulations, a contracting authority in the UK needs to consider, not only the UK Public Contracts Regulations 2006, but also the EU Consolidated Directive and the EU Treaty.

Specifically, the EU Treaty has been interpreted by the European Court of Justice (ECJ) as imposing positive obligations on contracting authorities when they procure goods, works and services contracts. These positive obligations concern competitiveness, objectiveness, transparency and fairness. As indicated by the ECJ in the case of *TelAustria*, they translate into the obligation on a contracting authority to subject **any** contract it lets (regardless of whether it exceeds the defined financial thresholds – see below) to some form of advertisement followed by a competitive procedure. This does not mean a call for tenders, but it does mean a contracting authority must advertise the contract and follow an open and transparent procedure to then let that contract to one of the contractors/services providers expressing an interest in the contract.



Coverage of the Public Contracts Regulations 2006

The EU Procurement Regulations and, more specifically, the obligation to advertise contracts in the OJEU, does not extend to all contracts. Instead, the obligation to advertise contracts in the Official Journal only extends to those contracts that exceed defined financial thresholds. At present, these thresholds in relation to contracts let by housing associations are as follows:

- £144,371 for services and supplies contracts; and
- £3,611,319 for works contracts.

These figures are net of VAT and the relevant thresholds are revised every two years. The above figures apply from 31 January 2006 to 31 December 2007.

The value of a contract is the estimated value of the consideration (i.e. the price) that the contracting authority expects to pay over the life of that contract.

The EU Procurement Regulations prohibit contracting authorities from splitting large contracts into smaller contracts in order to deliberately avoid the regulations. Furthermore, the aggregation rules (explained below) act to ensure that contracting authorities are required to let service and supplies contracts of relatively low value.

Aggregation rules

Many development contracts and appointments do not exceed the EU thresholds. However, housing associations are engaging in 'voluntary' aggregation and this, in turn, is working against government policy for SMEs and equality of opportunity. Regeneration projects in particular offer discrete contracts which may fall below the relevant threshold limits, such as the building of a community centre as a smaller part of the overall regeneration plans for a particular site. In any event SMEs can link up with the main contractor as their sub-contractor if encouraged by the client to do so.

Under the EU Procurement Regulations, when a contracting authority has a 'single requirement' for goods or services (not works), it is under an obligation to aggregate all of the contracts required to fulfil that single requirement when deciding whether the relevant thresholds apply and, therefore, whether the contract needs to be advertised in the Official Journal. If the total value for the single requirement exceeds the threshold, the EU procurement regulations will need to be adhered to in respect of all of the contracts (notwithstanding that the individual contracts when considered separately may fall beneath the thresholds).

Where a contracting authority has a requirement for services or supplies over a specific period, there are specific aggregation rules that apply in order to ensure that a contracting authority cannot avoid the EU procurement regulations by indulging in 'spot' or last minute purchasing.

Therefore, for the purposes of the thresholds, the value of a contract is calculated as either:

1. The total price paid under all contracts with similar characteristics during either the previous financial period or 12 months leading up to the date of the contract notice (adjusted to take account of any anticipated changes in quantity/scope/price in the following 12 months)
2. The estimated total price to be paid under such contracts over the next 12 months
3. The price to be paid over the whole period of the contract, if it is a fixed term contract for more than a year
4. In the event that the contract is a rolling contract or for an indefinite duration, the contracting authority is obliged to value the contract by reference to the average monthly consideration multiplied by 48.

Therefore a services or supplies contract may be subject to the EU Procurement rules even if, singularly, it falls below the threshold, when considered in light of a housing association's other services or supplies contracts.

Aggregation of works contracts

There is no requirement to aggregate contracts for similar 'works' contracts, but there is a requirement to aggregate individual contracts that are required to be let in order to procure 'a work'. 'A work' is defined as 'the outcome of works which is sufficient of itself to fulfil an economic and technical function'. This would mean that if the result of construction works is a whole building or engineering structure (e.g. a bridge/hospital/theatre) that can stand on its own and fulfil an independent function, it is likely to be classed as 'a work'. In contrast, works including the procurement of a re-roofing contract, contracts for water and damp proofing, plastering/joinery etc, would be classed as 'works'.

Housing Association Framework Agreements

It is primarily due to the aggregation requirements of the EU procurement regulations vis-à-vis services and supplies contracts that housing associations have opted to procure these requirements via framework agreements.

A framework agreement is defined as:

‘an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the economic operator will enter up to one or more contracts with a contracting authority in the period during which the framework agreement applies.’

The Public Contract Regulations 2006 now state that, provided the overall framework agreement is procured in compliance with the EU Procurement rules, the individual contracts or call-offs made underneath it do not need to be advertised in the Official Journal.

In light of the popularity of framework agreements amongst housing associations, potential solutions for encouraging SME’s involvement in the procurement process may include:

1. Price and quality criteria

SMEs are often innovative companies, but are often unable to defray their overhead costs and are therefore likely to be more expensive than their larger competitors. In order to take into account the benefits that such companies can provide, a housing association may choose to procure its framework agreements on ‘most economically advantageous tender’ (i.e. price and quality) rather than lowest price alone.

This would enable it to include quality considerations in its tender criteria, and could have the result of setting-off the potentially higher prices of SMEs against the relative benefits that an SME can bring to its framework procurement.

2. Smaller lots

Housing associations can include smaller lots under the framework agreement, even if there is a lack of ‘value for money’ or disproportionate administration costs for the housing association in including these.

3. Use of financial thresholds or bandings

Possibly the best method of including an SME in a framework agreement is to divide the framework call-off contracts into bandings based on financial value.

Furthermore, with the lower priced bandings, a housing association is able to stipulate in the OJEU notice and pre-qualification information a maximum financial turnover in respect of suitable bidders for these lots – i.e. a contractor/service provider cannot bid for that banding in the event its average financial turnover **exceeds** the given threshold. This would have the effect of excluding larger contractors from bidding for that banding, thereby creating a more level playing field between SMEs who would not be disadvantaged from a larger contractor’s ability to offer discounts, economies of scale etc.

The benefit of using a maximum turnover threshold is in the fact that the imposition of such a threshold is likely to be objective, transparent and non-discriminatory (i.e. in accordance with EU Treaty principles).

4. Larger regeneration schemes

In addition to framework procurement, there is the difficulty of including SMEs in large regeneration schemes, where a housing association usually seeks a developer partner. Associations could package the works in such a way as to include discrete, smaller projects (i.e. the construction of a community facility, library or similar) to be taken on by SMEs specifically or, alternatively, include in the main contract procurement an obligation on the successful main contractor to incorporate SMEs into their supply chains. This would include stipulating the requirement for enhanced community benefits, training, employment etc – all of which are allowed, as long as they are non-discriminatory.

5. Inclusion of local labour in a procurement process

As noted above, the EU Treaty places a number of positive obligations upon UK contracting authorities, all of which need to be considered by the contracting authority when undertaking a procurement process.

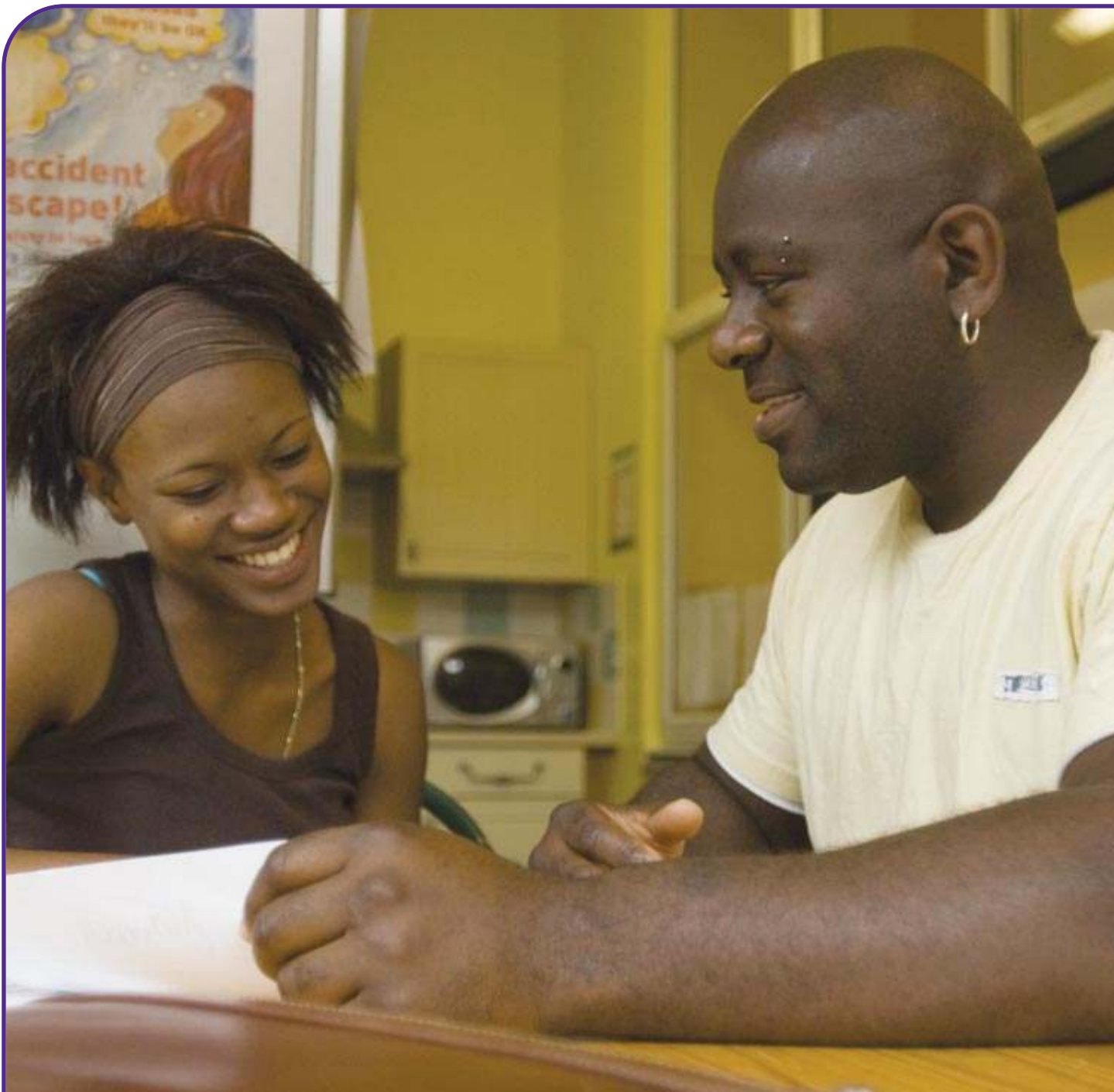
Whilst the Public Contracts Regulations 2006 and EU Consolidated Directive allow a contracting authority to take into account ‘secondary considerations’ (primarily environmental and social considerations) in a procurement process, it prohibits the use of such considerations where they are discriminatory against non-national bidders, non-objective, or alternatively where they have nothing to do with the subject matter of the contract to be procured.

Therefore, while a housing association can attribute an award criterion to 'employment, training and enterprise opportunities', it is unable to stipulate local labour, sourcing or sub-contracting as the preferred solution. The EU Treaty principle of 'free movement of persons' means that a contracting authority cannot include in any contract an obligation to employ UK nationals or favour national labour in the delivery of its contract.

Instead, a housing association can include in its contract requirements, specifications or invitation documents a requirement for 'community benefits to be delivered in the

locality of contract performance'. Further, such a requirement can be shown to be non-discriminatory if a housing association requires a contractor/service provider to deliver 'employment training and enterprise opportunities for small and medium enterprises, apprentices, long-term job seekers and school leavers'.

It is recommended that such proposals are costed for transparency and competition purposes, and the award criteria must be linked to the subject matter of the contract and should not be weighted in a way that is discriminatory.



Good Practice

The Small Business Friendly Concordat

The Small Business Friendly Concordat Good Practice Guidance (DTI/ODPM/LGA 2005) offers the following wording based on a case study from Northumberland County Council, which is said to be consistent with the delivery of best value and EU and UK procurement regulations. 'Best value' is based on whole life costs which are not simply the lowest initial tender price.

OJEU notices include the following wording:

'Under this procurement exercise a contractor is required to actively participate in economic and social regeneration of the locality surrounding the place of delivery for the provision of the service. Accordingly, contract performance conditions may relate in particular to social and environment consideration.'

This enables the award criteria to take account of this requirement and thereby increases the awareness of the relationship between procurement and the community strategy.

Examples include:

- How recruitment, training and retention can be improved to increase the number of women and ethnic minority staff employed at all levels on Alliance sites
- Improved site accommodation and practices; recognition of different religious practices (e.g. daily/Friday prayers)
- Partners working together to provide structured training
- Working with the supply chain at second and third sub-contract levels, as these are areas where smaller EMBs can have input and be encouraged to develop further.

As the partners selected have been chosen for their positive approach to diversity, amongst others, they are keen to learn about what is working for the other partners and how they can adopt or adapt them for their own companies. It is a good example of success breeding success.

Contractors are also aware that selection for future schemes is dependent on current performance and are cooperating with the Alliance Partners both at a practical level and also in trying to reach agreement on measurable targets and Key Performance Indicators (KPIs) in all areas including diversity.

Expectation of tenderers

In 2006, the **Connected Alliance (Octavia Housing and Care, Origin Housing Group and Shepherds Bush HA)** carried out a tendering process in accordance with OJEU regulations to appoint consultants and constructors to carry out the Alliance's development programme for the subsequent four-year period. The tender documents emphasised not only the need to adopt sound employment practices but also sought ways of adding value to existing diversity activities.

Questions were asked at PQQ stage and assessed. The short-listed tenderers were given prior notice of the questions to be asked at the interviews. These did not include a diversity question. At the interview, however, all tenderers were asked how they would contribute to the diversity targets of the Alliance.

This approach revealed those organisations that had little to back up their approach. It also highlighted the organisations where diversity was deeply embedded and part of the company culture and daily operations.

The framework agreement is now underway and discussions are taking place to enable best practices from each company to be implemented.

Branding contracts

Community Housing Group has recently completed an EU Framework tender for contractors and consultants. It tendered for contractors to work in three contract bands and consultants in six disciplines. Following an advertisement for expressions of interest in OJEU this was followed by a pre-qualification stage and a formal tender.

Community Housing Group were concerned that smaller companies, including EMBs, would not be aware of the tender. It therefore wrote to all companies it was working with to ensure they knew how to access the advert and the documents required to submit an expression of interest.

The outcome of the tender was continuity with many of Community's existing suppliers – for example one of its ethnic minority-led contractors with a long track record of working with Community has successfully achieved Framework partner status. It is strongly believed that if Community had not directed them to the OJEU advert it is likely they would have missed it and not tendered.

Within the tender itself Community Housing Group took steps to ensure tenderers understood its approach to race

and cultural diversity, and its requirement that companies are aware of and reflect the diversity of the communities it works with. Care was taken not to inadvertently breach EU rules on competition by avoiding references to 'local' companies. Community Housing Group asked tenderers to supply copies of their equal opportunities and diversity policies with their expression of interest, and Community's diversity policy was published with the information it provided at the pre-qualification stage. At invitation to tender Community Housing Group included the following questions in the questionnaire used to evaluate tender quality:

- Consultants – 'How will you ensure your staff are able to understand the needs of the end users of Community Housing Group's buildings in terms of race, cultural diversity and disability?'
- Contractors – 'Please describe how you will ensure your labour force reflects the race and cultural diversity of the neighbourhoods where Community Housing Group develops new homes.'

Using lots

The **North River Alliance** wanted to extend its framework agreement to include smaller jobs below the EU threshold so that it could develop partnering relationships with smaller as well as larger contractors, giving them real incentives to deliver a wider range of benefits than would be possible on a job-by-job basis.

North River Alliance initially decided to advertise two lots: one for jobs up to £3.5m and the other from £2.5m and above. However, they then had to overcome the problem of how to prevent the framework agreement for the smaller value jobs being dominated by larger contractors.

The Alliance eventually decided not to use the financial threshold methods, which it felt could be used to prevent smaller enterprises bidding for work that was bigger than projects they had undertaken before. Instead it was made clear that contractors would only be selected for one of the two lots. Larger contractors therefore voluntarily decided to bid mainly for the larger lot, leaving the field more open for smaller contractors to apply.

Two of the short listed smaller contractors are EMBs, which the Alliance hopes to improve on in future by doing more to publicise the value of taking part in the process to smaller contractors.

Using OJEU positively

Notting Hill Housing Group split its tendering process to comply with OJEU into two categories – for contracts above £3.5m and contracts below £3.5m.

This enabled SME contractors to have the opportunity of tendering for the smaller contracts. As a result Notting Hill selected 4 contractors as its framework contractors for the smaller contracts, of which 2 were SME contractors.

Model clauses

An extract from Amicus Horizon Group/West Kent HA/Russet Homes contractor framework agreements invitation to tender

The contractor shall observe as far as possible the Commission for Racial Equality's Code of Practice in Employment 2006 which gives practical guidance to clients and others on the elimination of racial discrimination and the promotion of equality of opportunity in employment including the steps that can be taken to encourage members of ethnic minorities to apply for jobs or take up training opportunities.

Tenderers are required to supply details of their employment and training policies, codes of practice or procedures, and details of the relevant induction and ongoing training to be given to employees performing the Project. In particular Tenderers are requested to confirm:

- How Tenderers intend to ensure the recruitment and training of staff with the necessary skills and competencies to deliver the Project to the required standards;
- Details of Tenderers policies, codes of practice or procedures relating to Equal Opportunities, and in particular the obligations set out in the Race Relations Act 1976 and the Disability Discrimination Act 1995 (all as amended from time to time);
- Details of training and employment schemes that the Tenderers would adopt in respect of the Programme setting out proposals for developing apprenticeships, supporting ethnic minorities in the job market, promoting equality of opportunity among employees, customers and sub-contractors (including support of EMBs) meeting the needs of long-term jobseekers or other innovative employment practices.

Check list of action points

3. Encouraging supplier diversity through Development Framework Agreements

Action points	✓
Determine the overall procurement strategy for the association in relation to the PQQ or Development Framework Agreement.	
On specific projects, write in the appropriate specification. In terms of framework procurement and large single project/regeneration procurement, housing associations need to adopt strategies detailed elsewhere in this guide that encourage the inclusion of SMEs.	
Publish advertisements for contracts in appropriate locations (i.e. not just in the Official Journal of the European Union); for example, on the housing association's website, local and trade press.	
Consider the use of price preferences, smaller lots and financial threshold or bandings.	
Package work, services and supplies contracts so as not to form a barrier for bidding SMEs (whilst not breaching EU aggregation rules).	
Design procedures and contract award criteria that enable you to take into account added value and innovative practises often associated with SMEs so that these can be picked up in the procurement process.	
Weight criteria to include added value; some associations are now taking decisions based on 70 per cent weighting towards non-price elements.	
Include contract conditions that support the target of community benefits on the supply side.	
Outcome based requirements should be set in the tender specification (this is probably the most powerful intervention point in the procurement process). Make it a requirement to agree targets for the sustainability outcomes and demonstrating their achievement through a KPI.	
Make sure that the invitation documentation makes clear that when the association is considering further contracts or extending the term contract it will require the contractors to present clear evidence about how they have achieved these outcomes.	

More information

References

- Arrowsmith, S *The Law of Public and Utilities Procurement*, Sweet and Maxwell (2006)
- *Guide to the EU Procurement Rules*, National Housing Federation (2005)
- *The Small Business Friendly Concordat: Good Practice Guidance*, DTI/ODPM/LGA (2005)
- The Public Contracts Regulations 2006
(A print version is available and is published by The Stationery Office Limited as The Public Contracts Regulations 2006, ISBN 0110738853)

Websites

www.ogc.gov.uk

4: The role of main contractors in promoting SMEs

Overcoming the problem

In the previous section it was noted that the large-scale, long-term nature of contracts which some housing associations place with large companies enable them to set requirements which contractors might otherwise not be willing to meet. Many main contractors, if not most, do not directly employ trades staff or deliver projects direct; most deliver through sub-contractors. So how can main contractors assist in securing supplier diversity?

Having established its requirements for supplier diversity or community benefits in the specification or Development Framework Agreement (see previous section), housing associations should monitor the supply chain approach of the main contractor and its lists of sub-contractor partners and agree targets for future inclusion with main contractors. The main contractor should ensure that its sub-contractors and supply chain partners also commit to supplier diversity.

Main contractors should be encouraged to develop a policy on the use of diverse suppliers as sub-contractors. They could also take steps to ensure that smaller SMEs can engage both with larger sub-contractors and with the main contractors. This should form part of their corporate social responsibility strategy and will bring benefits for them too, including access to local suppliers and a means of meeting development framework requirements on community benefits (where these are included).

Housing associations can put forward SME firms as 'nominated sub-contractors' (without the nomination) on larger schemes, so that contractors form a working relationship with the firms. In some cases where this has happened a relationship has developed and the larger contractor has chosen to work with them again. There is a need to ensure that the 'nomination' will not adversely impact on warranties for completed work if a housing association is seeking to procure 'single point' responsibility from its main contractor.

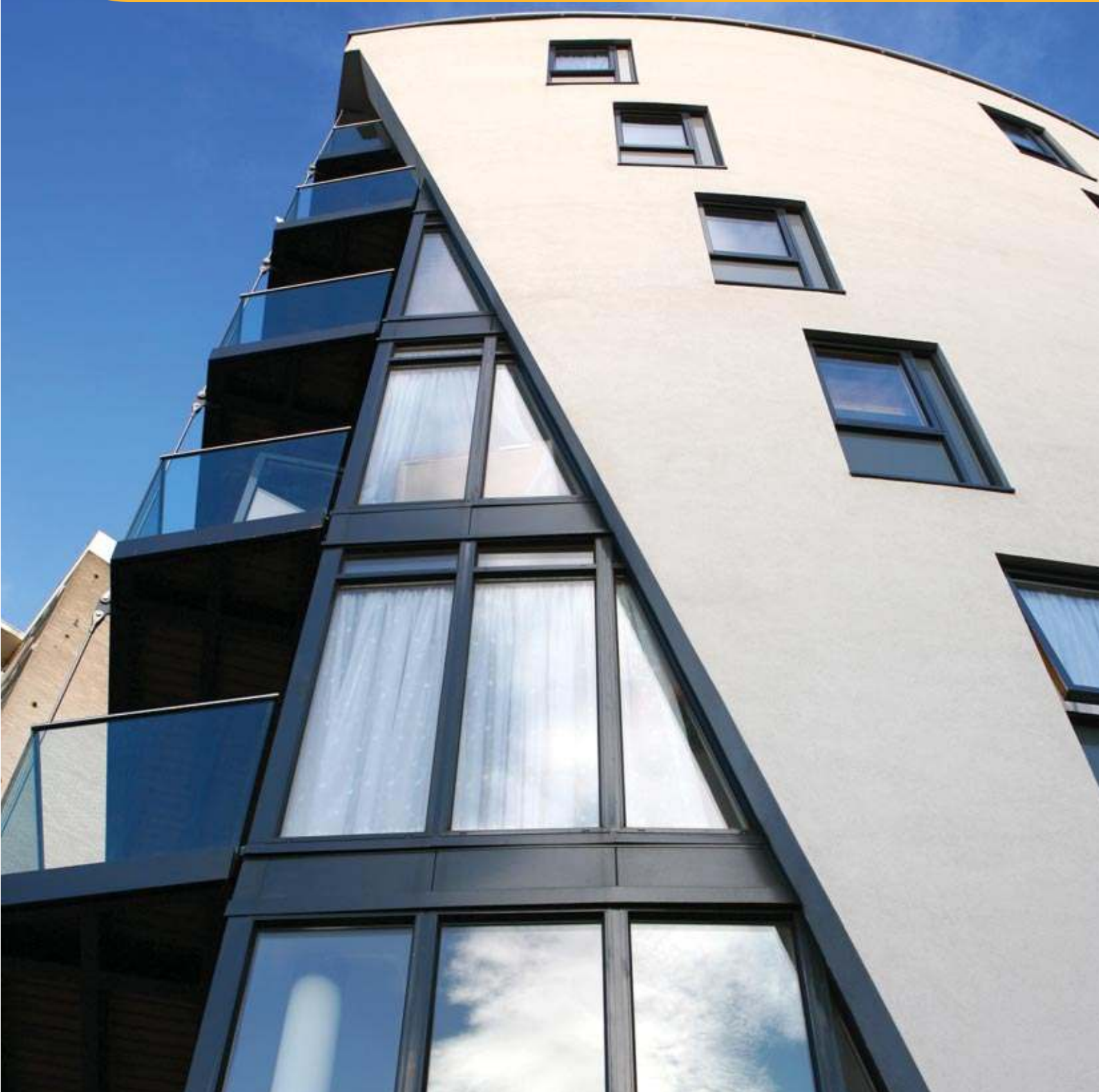
SMEs often require technical advice on procurement and self promotion. A number of larger contractors in London are already engaged in helping them with these processes, as outlined in the Good Practice section.

Larger contractors may also offer longer-term mentoring services to smaller contractors. For example, the London Equal Opportunities Federation (LEOF) has hosted events for SMEs where contractors might identify projects with a lower limit. These events, for about 15 to 20 people, include site visits, presentations and discussions about modern methods of construction. The main contractor and the end client (usually a housing association) may then arrange for some SMEs to meet the main contractor at a later date on a more formal basis, with a view to becoming a sub-contractor. This may result in two or three SMEs working on a particular project. Denne Construction Ltd has been particularly diligent about using this route, as noted in the Good Practice section below.

Larger contractors can also assist smaller sub-contractors in practical ways. Housing associations should ensure that main contractors pay sub-contractors on time and when they are paying progress payments to main contractors that payments flow swiftly down the supply chain.

Contract documentation should ensure that larger contractors will be measured on their ability to comply with standard terms and conditions on paying sub-contractors. In the case of long-term contracts with partnership arrangements, KPIs can be included regarding the payment of sub-contractors.

“ Many main contractors, if not most, do not directly employ trades staff or deliver projects direct. ”



Good Practice

Mentoring an integrated supply chain

Denne Construction Ltd have worked with **AmicusHorizon Group, East Thames, Tower Homes** and many other housing associations. Denne recognised that more and more work was based on Development Framework Agreements and therefore smaller suppliers were becoming more excluded. They worked with LEOF in order to develop an approach whereby they were able to mentor smaller EMBs and assist them in getting work as sub-contractors. They have assisted smaller suppliers to position themselves better through a suite of training and research programmes.

The 'mentoring in an integrated supply chain' project ran over a period of two years. It focused on how a main contractor can develop the necessary expertise to effectively manage its supply chain of trade contractors. It also explored how the main contractor can work with locally based construction organisations to assist client bodies in achieving their wider social and community objectives.

The report of the project covered the following issues:

- Developing the communication skills within a main contractor organisation
- Setting up a 'preferred' supplier agreements with trade contractors
- Developing a mentoring scheme to support locally based construction organisations.

The Supply Chain Mentoring Toolkit was funded by the Department of Trade and Industry. It shows how a main contractor can support supply chain partners and locally based construction organisations.

Denne has also collaborated with others to develop the Strategic Forum for Construction Integration Toolkit. The Integration Toolkit offers information, advice, guidance and training – signposts and pointers to help trades contractors with particular needs, projects and challenges.

Denne's partnering workshops involve trade contractors, design consultants and client representatives. They work collaboratively to attempt to deliver effective solutions. They have also established a supply chain business club. Their approach is outlined in a best practice case study issued by Constructing Excellence.

Training and development

Mace Business School is the Mace Group's learning and development facility. The Mace Business School has been set up to transfer knowledge and expertise to the Mace supply chain through the delivery of tailored programmes in management and construction.

Just as clients demand and expect high standards of Mace, so Mace in turn expects high standards of its supply chain. The Mace Business School is a manifestation of the culture of learning that is promoted across all Mace projects.

The 'Passport Scheme' is a training programme that takes place over ten weeks. Developed for mechanical and electrical and structural and architectural trade contractors, the scheme ensures a consistent approach and 'right first time' delivery of projects.

Using local labour

Rok's philosophy is that sub-contractors and local labour will be engaged in the same community activities. It believes that this helps to bring pride into the work and a sense of ownership of the project. Although Rok is beginning to acquire smaller contractors in order to avoid 'margins on margins', currently most of its work is sub-contracted with little direct delivery.

Rok has a history of delivering local labour schemes. Sometime ago, it revised its approach to supply chain management. When it is new to an area it organises an open day which involve a range of agencies, and sometimes local celebrities, to attract young people in particular, and it makes links with local colleges. Rok then develops a register of potential employees and their skills base.

Rok targets each sub-contract trade to deliver local labour, setting out gang requirements, matching trainees with local colleges and sourcing funding for this. There is a training manager who assists in this work.

Local people register with Rok, giving details of their own trades. This includes young people and others at college who may require placements. Rok offers modern apprenticeships. It maintains monthly records of targets

of employment and outputs achieved, and regularly analyses the data. If particular trades are not achieving local labour targets, Rok will make efforts to find out why and assist in targets being met. These approaches have a multiplier effect on the local economy.

Sub-contractors

Rok lists the trades that it requires and local sub-contractors from SMEs will be contacted by the supply chain managers. Rok also advertise in ethnic-specific press. It packages works into sizes that might suit local SMEs and will also offer support to them. This has worked particularly well on smaller in-fill sites.

Rok is committed to SMEs and to local ownership of projects which flows from a local involvement by sub-contractors. It would not commit an SME to a project that is valued at more than 30 per cent of its turnover. Rok recognises that this still places pressure on SMEs and that there are risks to both Rok and to the SME but it will mentor them through this process.

Materials supply

Rok has found that SMEs were not always engaging with the process adequately and that they were failing on occasion because SME purchasing power for materials was poor. Now Rok buys supplies on a national basis, which can be 10 to 40 per cent cheaper (owing to volume deals), and sub-contractors are able to benefit from Rok's rates. The approach that Rok has adopted works equally well for Decent Homes Standard work or for regeneration and new build.

SME events

At Redbridge Foyer, working with the London Equal Opportunities Federation and East Thames Group, Rok held a half-day supply chain event for local contractors, in which several aspects of the project were discussed including Modern Methods of Construction (MMC). This enabled them to attract SME sub-contractors onto the project.

With Network Housing Group at Colindale in the London Borough of Brent, a similar open day was held in which SMEs were taken through the European Union OJEU process and Rok's approach to sub-contracting and local labour requirements.

Examples of sub-contracting to diverse SMEs

At the St. Martins Estate in Tulse Hill for Metropolitan Housing Trust a £35m project was packaged out to sub-contractors, including local minority-led businesses.

At Brooke Road in Plaistow in the London Borough of Newham a £24m new build scheme with Community Housing Group, which includes MMC, was virtually all sub-contracted to SMEs. Local labour is being used with a range of funding sources, including New Deal for Communities (NDC) funding.

Supporting women in construction

Servite Housing's development partner, **Sandwood Construction Ltd**, is a medium sized enterprise that is assisting Servite to meet its supplier diversity objectives. Sandwood is a little unusual as it directly employs staff and will continue to do so as part of Sandwood's notable commitment to diversity and equality of opportunity.

Sandwood is contributing to Women in Construction, building links with the West London College to provide work experience opportunities in various trades, with a particular emphasis on women's participation. Apart from the value of the work experience itself, this has led to the appointment of two female apprentices to add to the one it had already employed.

Sandwood has had a partnering agreement with an ethnic minority-owned and run plastering sub-contractor since the company's inception and has a working relationship going back over 20 years. More recently, it has formed a joint venture acting as a main contractor with the sub-contractor to pool their knowledge and experience and ease the SME's progress from specialist sub-contractor to design-and-build main contractor.

Check list of action points

4. The contribution of main contractors in promoting SMEs

Action points	✓
Check the Corporate Social Responsibility strategy of main contractors in relation to all aspects of the diversity agenda including employment practices.	
Work with larger partner/main contractors to develop a detailed approach to supplier diversity.	
Encourage them to support supplier events.	
Encourage them to support general SME mentoring schemes.	
Ensure that this is reflected in your approach to Development Framework Agreements and other contract specifications.	
Include the use of SMEs as sub-contractors and achieving community benefits as key performance indicators (KPIs) within the framework agreement.	
Monitor progress throughout the period of the contract or framework agreement.	
Review progress at the end of the four year period when the framework agreement comes up for renewal.	
Ask larger contractors to consider mentoring SMEs in an area local to larger sites and regeneration projects.	
Work with larger partner contractors to develop a detailed approach to supplier diversity.	



More information

- *Supporting BME Sub-contractors (2004)*
[www.c4pim.org.uk/downloads/Supporting BMEs Best Practice Guide.doc](http://www.c4pim.org.uk/downloads/Supporting%20BMEs%20Best%20Practice%20Guide.doc)
- *Supply Chain Mentoring Toolkit (DTI/DENNE/CFPE)*
[www.c4pim.org.uk/downloads/SupplyChainMentoring Toolkit.doc](http://www.c4pim.org.uk/downloads/SupplyChainMentoringToolkit.doc)
- *The Strategic Forum for Construction Integration Toolkit*
www.strategicforum.org.uk/sfctoolkit2/home/home.html
www.denne.co.uk/partnering/Denne%20Case%20Study%20-%20supply%20chain.pdf

For further information contact: nicholas.fowler@Denne.co.uk or contact the Centre for Performance Excellence; visit the website: www.c4pim.org.uk

Appendix 1: The legal framework and expectations

There are many legal and regulatory expectations of housing associations in relation to diversity in procurement and some in relation to supplier diversity. This section considers the equalities legal framework and then procurement strategy. Both are considered first at a national level and then in relation to the expectations of the Housing Corporation and others.

The European Union

Housing associations are 'bodies governed by the public law' for the purposes of European Union (EU) procurement rules. They must therefore comply with the requirements of the EU Consolidated Directive 2004 on public procurement, and EU treaty-based principles of non-discrimination and equal treatment will apply.

The EU treaty principles of non-discrimination, transparency and equal treatment apply to all public contracts no matter what the value. Furthermore, the EU Consolidated Directive based on these treaty principles lays down procedures and criteria for certification, selection and award of public contracts above certain thresholds. Currently, the limit is £144,371 for services and supplies and £3,611,319 for works. Changes to thresholds are given on the OGC website and will change on 31 December 2007.¹⁹ The EU Consolidated Directive is implemented in the UK through regulations.

A more detailed consideration of the EU regulations and advice on incorporating compliance within Development Framework Agreements in particular is given in Part 2 Section 3 of this guide.

The UK Equalities framework

Equalities legislation is familiar to housing associations. At present, however, it is a rapidly changing field. The UK government has embarked on major changes which will alter the equalities framework within which housing associations operate.

The Equality Act 2006 established the Commission for Equality and Human Rights (CEHR). It makes discrimination unlawful on the grounds of religion or belief, in the provision of goods, facilities and services, the disposal and management of premises, education, and the exercise of public functions. It also creates a duty on public authorities to promote equality of opportunity between men and women, and to prohibit sex discrimination in the exercise of public functions. Whilst housing associations are not public bodies,

much of this practice has become an expectation through the Housing Corporation Regulatory Code and the CRE Codes of Practice.

The CEHR will come into being in October 2007. This body amalgamates the Equal Opportunities Commission, the Disability Rights Commission and the Commission for Race Equality into one body.

The CEHR will bring together the expertise and resources to promote equality and tackle discrimination in relation to gender, gender reassignment, disability, sexual orientation, religion or belief, age, race and promote human rights.

Two reviews are underway, or have just reported, at the time of writing this guide. The final report of the Equalities Review was published in March 2007. The Discrimination Law Review (DLR) is informed by the work of the Equalities Review and will also report in 2007. The findings of both will lead to the publication of a single Equality Bill.

The DLR is focusing on:

- an analysis of the fundamental principles of discrimination legislation
- exploring the scope for harmonisation/ alignment of the current law
- consideration of areas where protection is currently inconsistent. In particular against discrimination in the provisions of goods, facilities and services and the exercise of public functions which is not currently provided in relation to age or gender reassignment
- the future scope of public sector duties
- updating discrimination law on grounds of sex and gender reassignment
- reviewing enforcement procedures and remedies against breaches of discrimination law.²⁰

Equality Legislation

The last 30 years have seen the introduction of a number of different pieces of equality and equality-related legislation which currently impact on the work of housing associations.

These include the:

- Sex Discrimination Act 1975 as amended in 1982;
- Race Relations Act 1976 as amended in 2000;
- The Race Relations Act Amendment Regulations (2003);

¹⁹ www.ogc.gov.uk/index.afp

²⁰ www.CEHR.gov.uk

- Disability Discrimination Act 1995 with amendments in force from October 2004;
- Asylum and Immigration Act 1996
- Protection from Harassment Act 1997
- Human Rights Act 1998
- Sex Discrimination (Gender Reassignment) Regulations 1999
- The Gender Recognition Act 2004
- Equality Act 2006

The Sex Discrimination Act 1975 (SDA) protects people from discrimination on the grounds of sex, and marital status. Exceptions to the SDA include genuine occupational requirements. Employers will be able to recruit staff on the basis of a genuine occupational requirement if it can be shown that it is a genuine and determining requirement of the job to be of a particular gender.

The Gender Equality Duty comes into force in April 2007. All public authorities must demonstrate that they are promoting equality for men and women and that they are eliminating sexual discrimination and harassment.

The Race Relations Act 1976 (RRA) protects people from discrimination on the grounds of race, colour, nationality, and ethnic or national origins. Exceptions to the RRA include genuine occupational requirements.

The RRA covers discrimination in employment, education, goods, facilities, services and premises.

The Race Relations Amendment Act (2000) placed a statutory obligation on all public bodies to develop a race-equality policy and action plan, not only to eliminate race inequality but proactively to promote equality between different racial groups, to assess the impact of all its policies on different racial groups, to ensure all staff are trained in their duties regarding promoting race equality, to monitor the recruitment and progress of minority ethnic staff and to publish the results.

In 2000, the European Union adopted two new directives (the Employment and Race Directives) which each member state is required to incorporate within their domestic law. All the proposed changes to UK legislation produce a common definition of direct and indirect discrimination and harassment.

The Employment Equality (Age) Regulations 2006 came into force on 1 October 2006. The regulations:

- ban age discrimination in terms of recruitment, promotion and training
- ban unjustified retirement ages of below 65
- remove the current age limit for unfair dismissal and redundancy rights.

National procurement policy

The National Procurement Strategy for Local Government sets out a strategy for improving procurement across the 400 local authorities across the UK who, at that time, were spending over £40bn a year procuring goods and services.²¹ The strategy sets out how local authorities can achieve a number of objectives including ‘a diverse and competitive range of suppliers... including small firms, social enterprises and minority businesses’.²²

The National Procurement Strategy is also expected to apply to partner agencies of local authorities, which includes housing associations. The strategy encourages local consideration of SME involvement to exploit lower costs, innovation and competition and to improve services to ensure that value for money is delivered.

It also sets out what local authorities should do to identify the steps needed to improve the capacity and capabilities of SMEs, so enhancing competition.

Whilst this strategy does not directly apply to housing associations, there is much to be learnt from the local authority approach in the pursuit of best practice in delivering diversity in development procurement.

Support for SMEs

The UK government is supporting SMEs through the promotion of Business Link and through the Small Business Service, believing that there will be benefits to the economy which will promote competition and innovation in procurement. A government report made 11 specific recommendations to eliminate the obstacles that prevent SMEs from participating in the government market place. Many of these are relevant to housing association development procurement and have been interpreted and included where relevant throughout his guide.²³

In addition, the Small Business Friendly Concordat Good Practice Guidance builds on the experience and good practice developed by local authorities over recent years, on which housing associations could draw.²⁴

The Small Business Friendly Concordat is a voluntary non-statutory code of practice developed by the then ODPM/LGA/Small Business Service. It encourages local authorities to sign up to the Concordat.

The National Procurement Strategy for Local Government encourages local authorities to achieve community benefits through procurement and to actively engage with a diverse range of suppliers, including SMEs.

²¹ The National Procurement Strategy for Local Government, ODPM (2003)
²² Ibid

²³ *Government: supporter and customer*, Better Regulation Task Force/ Small Business Council (2003)

²⁴ Small Business Friendly Concordat Good Practice Guidance, ODPM/DTI/LGA (2005)

It also sets a target for all local authorities to have adopted the Concordat by the end of 2005. Although housing associations are not members of the Concordat there is much within it that offers good practice. Its principles and approaches could be applied, particularly where housing associations are working together.

The Concordat helps to take forward the agenda for sustainable communities. The Local Government Act 2000 requires local authorities to prepare a community strategy. They have powers to promote the economic, social and environmental well-being of their communities. Provided that there is compliance with EU procurement regulations, local authorities can work with suppliers to realise such community benefits through procurement.²⁵

Statutory code of Practice on Racial Equality in Housing – England (2006)

This code applies to all providers of housing and related services in England, whether in the public, private, or community and voluntary sectors. It includes landlords, 'arms-length' housing organisations, large-scale voluntary transfer organisations, planning bodies, house builders, housing advice providers, private sellers and estate agents.

On the matter of procurement, it notes that the Housing Corporation is a listed public authority. The Corporation therefore places specific obligations on housing associations with regard to racial equality. Associations should also pass on racial equality requirements in respect of staffing, customer satisfaction and dealing with racial harassment to their consultants, contractors and suppliers.

The further requirements of this code in relation to procurement are considered in the later sections of this guide.

Public Procurement and Race Equality

The expectation that race equality will be promoted impacts on two specific aspects of procurement relevant to this guide:

1. the equal opportunities policies and practices of contractors and suppliers
2. contract opportunities for businesses owned or run by people from ethnic minorities or under-represented groups.

There is specific guidance on procurement and race equality flowing from the duties under the Race Relations (Amendment) Act 2000. The CRE Procurement Guide sets out how councils can ensure that their procurement practices comply with race equality expectations and duties. It sets out what public bodies can do at each stage of the contracting process. The CRE Guide offers a model approach for both public authorities and contractors.²⁶

The Confederation of British Industry (CBI) and the Commission for Racial Equality (CRE) have produced a joint

leaflet setting out the case for public procurement and race equality.²⁷ This notes that there is a strong business case for adopting good practice, not just because of the cost and damage to reputation from losing a discrimination case. Employer surveys show that where employment is rooted in equality of opportunity, productivity increases. Developing a diverse supplier base can enable contractors to meet varied demands: when an organisation strives to be responsive and accessible to all service users, everyone benefits.

In a separate document, the CRE sets out the guiding principles and the outcomes expected of procurement practice. This offers a useful framework for housing associations too. The guidelines note that the outcomes should include:

- Delivering contracts in a way which is non-discriminatory, and promotes equality of opportunity for staff, the general public, and businesses
- Ensuring that goods, works, and services provided by contractors cater for all users' needs
- No difference in the satisfaction rates of users, or staff, from different racial groups in comparison with white British respondents
- Contractors should be representative of the local population, or of the area from which the businesses are drawn, with respect to ethnic diversity.²⁸

Expectations of housing associations

The Housing Corporation

The Housing Corporation's Regulatory Code (2002) states that: *'Housing associations must demonstrate when carrying out all their functions, their commitment to equal opportunities. They must work towards the elimination of discrimination and demonstrate an equitable approach to the rights and responsibilities of all individuals. They must promote good relations between people of different racial groups. The Code also expects associations to provide good quality services by being responsive to the individual characteristics and circumstances of residents.'*

In relation to procurement, Good Practice Note 8 on Equality and Diversity (2004) notes that:

'Associations can use their purchasing power to ensure that contractors used have their own equality and diversity policy and training, and that people who provide services in people's homes are sensitive to different cultural needs.'

The Corporation's Procurement Strategy for the Supply of Affordable Homes (2005) requires each investment partner to provide a method statement which sets out their intended approach to future supply chain management. It states that:

'All our investment partners should build racial equality considerations into their procurement processes.'

²⁵ Ibid

²⁶ *Race Equality and Public Procurement a guide for public authorities and contractors*, CRE (2003)

²⁷ *Public Procurement and Race Equality: a briefing for suppliers*, CRE/CBI (2003)

²⁸ *Public Procurement and Race Equality: guidelines for public authorities*, CRE (2003)

In relation to the supplier base it notes:

'When setting up buying consortia and partnering down the supply chain the Corporation has an expectation that Investment Partners planning schemes with significant BME communities properly represent BME suppliers and associations in their partnerships.'

Audit Commission Key Lines of Enquiry

The Audit Commission's Key Line of Enquiry 31 is concerned with diversity. Revised in autumn 2006, the KLOE asks 'how does the organisation ensure that its contractors and consultants are committed to diversity in service provision?'

The Commission expects an excellent performer to 'have a well-developed procurement policy that is not exclusive and that requires consultants and contractors to demonstrate good practice and sign up to the organisation's policies, encouraging the contractor to write their own policy and to develop this for other clients'.

The Commission also expects that the performance of contractors and consultants is monitored, in conjunction with service users, and the results used to improve services. These are, however, quite low standards of excellence in relation to diversity in procurement.

Race equality code of practice for housing associations

Following the Race and Housing Inquiry commissioned by the National Housing Federation which reported in 2001, a Race Equality Code of Practice for Housing Associations was published by CRE, the National Housing Federation, the Housing Corporation and the Federation of Black Housing Organisations.

While this has been superseded by the CRE's Housing Code of Practice (2006), the review of the 'Challenge Report' on race and housing associations, which also reported in 2006, noted that an outstanding priority remains: more action by key stakeholders to promote EMBs and ethnic minority contractors.

The Construction Clients Charter

Charter Clients commit to continually improving their performance across four themes of cultural change:

- client leadership
- working in integrated teams
- whole life quality
- respect for people.

The outcomes from the projects are measured using the construction industry Key Performance Indicators. For example, fostering trust throughout the supply chain by treating suppliers fairly and ensuring a fair payment regime is particularly relevant to SMEs that have reported payment problems as a critical issue. The relevant question asked of

housing associations in the Chartered Client questionnaire is 'are there policies and practices established and successfully delivered on diversity?'

The Respect for People agenda is also relevant and is considered in section 4 of the guide. Main contractors should:

- adopt a policy of respect for all people involved in construction activity (health, safety and welfare, site conditions, diversity, training and certification)
- train their in-house staff.

The guiding principles of equality in procurement (based upon EU principles) include:

Relevance

Any contract that could have a different impact by racial group is relevant. Consider all elements of the contract, not just those which are most obvious.

Proportionality

The actions you take to ensure race equality should relate to the likely impact, and size, of the contract. Don't ignore smaller contracts, but simpler procedures may be more appropriate.

Accountability

Clear lines of accountability are needed if responsibility is delegated.

Transparency

This is a principle of EU rules and UK law, and is a key element of the duty.

Mainstreaming

Race equality should be integral to corporate objectives, planning and service provision.

Appropriateness

Organisations vary, so the guidance needs to be adapted to work for you.

Complying with the law

You must meet the requirements of the Race Relations Acts when carrying out procurement, but also comply with EU and UK laws, and government policy.

Risk assessment

Some risk can be transferred to contractors, but responsibility stays with the housing association.

Derived from *Public Procurement and Race Equality: guidelines for public authorities*, CRE (2003)

LONDON HOUSING FEDERATION

The London Housing Federation is a regional office of the National Housing Federation, the trade body for England's housing associations. We campaign for and promote better homes for Londoners. Our members are London's 360 not-for-profit, independent housing associations. Together they house 1.25 million people in London.

Housing associations have launched iN business for neighbourhoods, a project to improve performance and challenge negative perceptions of the sector and its customers. They have made fresh commitments to neighbourhoods, customers and excellence.

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