



## Seminar: Procurement and Equality, Diversity and Inclusion

### Speakers

**Lucy Doran,  
Partner,  
Trowers & Hamblins LLP**

**Mark Lomas,  
Head of Equality, Diversity  
& Inclusion,  
HS2**

**Helen Randall,  
Consultant,  
Trowers & Hamblins LLP**

**Sharon Slinger,  
Director,  
Constructing Rainbows**

**Samantha West,  
Business Unit Commercial  
Director,  
VINCI Facilities**

*In July 2021 the BSA, in collaboration with the LGBT+ in FM Network and Trowers & Hamblins LLP, organised a Seminar to discuss client expectations of equality, diversity and inclusion (EDI) policies and practice, with particular reference to the procurement process.*

*Some 30 participants from the public, private and VCSE sectors were involved.*

*The Seminar aimed to cover how public and private sector clients' approach in these areas was developing, and how far this was then reflected in the procurement process. It also looked at how this was being reflected in the policies of service and infrastructure providers themselves, and in their own approaches to supply chains.*

*Helen Randall and Samantha West welcomed participants and set out the backdrop to the discussion.*

*Samantha emphasised the importance of the procurement process in driving change and improvement, including on EDI. She used as an illustration a diversity and inclusion conference she had attended in 2017, where the HS2 Chief Executive said all suppliers had to walk the walk on D&I. This was fantastic to hear and encouraging on a personal level for Samantha, as a transgendered woman, and for others in attendance.*

*Lucy and Helen presented a legal insight and a summary of public sector perspectives.*

Lucy said the legal situation was not always straightforward, not least as the legislation was silent on EDI explicitly.

The current public contract regulations said criteria must not discriminate or favour particular economic operators; the Equality Act said contractors must comply with their public sector equality duty; and, for councils, the Local Government Act said they should not have regard to certain non-commercial considerations.

The first question was how EDI was addressed in procurement itself, and the second was how it was addressed in documents such as the contract, specification and policies.

In relation to the procurement process, the questions asked of bidders had to be relevant to the subject matter of the contract and must not discriminate or favour particular bidders. Questions could ascertain how bidders would respond to the needs of particular communities or groups with protected characteristics, linked to the services being procured. For example questions could ask about their understanding of EDI; how it would impact on the services they were providing; and their proposals to address challenges in this area.

EDI considerations tended to be included more in services contracts, where the link was easier to demonstrate. It also tended to feature more in urban rather than rural areas.

On the wider documents, bidders were often asked for EDI policies at the standard selection questionnaire (SQ) stage. That could ultimately lead to disqualification.

The LGA had an advisory equality framework to assist councils, and this emphasised the importance of embedding EDI throughout the procurement cycle, including the contract, the specification, monitoring and measuring requirements, and through engagement with service users to ensure the needs of groups with protected characteristics were taken into account. The focus was on contract delivery rather than the supplier.

The Green Paper included a proposal to allow criteria not directly linked to the subject matter of the contract, which might provide some greater flexibility in how EDI could be included in procurement.

Helen provided a case study of a council addressing EDI in procurement considerations. They had sought to ensure community priorities, including EDI, were reflected in council priorities. There was nothing yet in the procurement rules stipulating priority should be given to organisations owned by or employing people with protected characteristics but, when procurement was looked at holistically, the public sector equality duty should be supported by and integrated into the procurement function - with the mechanisms, machinery and policies put in place to reflect EDI at an early stage, for example in the annual Corporate Plan and then in the procurement strategy. Councils should also consult communities and service users, including those with protected characteristics. They could and should also act as facilitators of suppliers who could meet the needs so identified.

Authorities could reflect EDI goals in the procurement board, their investment strategy, and their contract letting procedure rules. They should have an equality toolkit, and interweave EDI into their public consultation exercises, and where those exercises were advertised, as well as where the procurement opportunities themselves were advertised. They should also think about how lots were divided, and whether specialist lots could speak to the needs of specialist communities.

Bidders in turn should look at the Corporate Plan, any engagement with communities, and any industry standard which adopted best practice and to which the authority might have reference in the procurement process.

Authorities were also looking at how contract terms in these areas could be enforced. They were increasingly focused on community interests, so all these were increasing trends.

Asked about enforcement, Helen mentioned KPIs and also reports on supplier EDI performance to the procurement board.

Helen was also asked about FM industry standards. She was involved as Chair of Stonewall Housing<sup>1</sup> in relation to their Housing Inclusion Standard<sup>2</sup>. In those parts of FM where inclusive industry standards did not exist, there were advantages in inclusive standards being drawn up, so services met the needs of communities with protected characteristics. This should be community-led and a consultation held under Best Value legislation for example The Local Government Act 1999, section 3.

Mark Lomas then introduced a client perspective on EDI issues.

HS2 had developed an inclusive procurement model. Supplier diversity was important for two reasons: to attract a full range of talent at a time of possible skill constraints, including to sub-contractors which accounted for the majority of the workforce; and to ensure the HS2 pound fully benefitted communities across the UK.

EDI was baked into the entire procurement process.

The screening and PQQ process asked basic EDI questions regarding policies, tribunals, termination of contracts etc.

The ITT was the meat of the matter. The difference between winning a major tender and coming second had been found to be around 3 per cent. So the weighting given to skills, employment, education and EDI was deliberately set well above this threshold in order to give bidders a business case for EDI. The ITT explored areas around the organisation itself, and also the supply chain and supply chain management.

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<sup>1</sup> <https://www.stonewallhousing.org.uk>

<sup>2</sup> <https://housingevidence.ac.uk/wp-content/uploads/2020/11/Housing-with-Pride-Final-for-publication-on-17-November-2020.pdf>

The works information / scope of services made EDI a contractual requirement. Under contract management, progress on EDI was reported every six months.

Requirements for Tier 1 suppliers included: a relevant set of policies; recruitment reporting at each stage of the recruitment process; participation in EDI training, relevant to the role; workforce diversity across all protected characteristics, reported every six months for those working on the contract in question (which did not provide an excessive burden); measurement and reporting of supplier diversity (suppliers majority owned and operated by those with protected characteristics and others), along with general SME and VCSE reporting; and achieving externally audited EDI accreditation such as the National Equality Standard or Clear Assured.

In return, HS2 provided substantial tools and support for the supply chain, including free diversity and socioeconomic data, covering all local authorities along the HS2 route; best practice models and training videos; databases of community organisations; and a skills, employment, education, EDI best practice forum for all Tier 1 suppliers.

HS2 also practiced what it preached and led by example on all requirements expected of its suppliers.

The results were already clear. All major contracts for HS2 were over-indexing the industry averages for diverse groups. Across the programme around 22 per cent of the supply chain workforce were women. 18 per cent of the supply chain workforce were BAME. 5 per cent were disabled. 2 per cent were LGBTQ+. During the last financial year approximately £503 million was spent with diverse owned businesses, SMEs and VCSE suppliers. The goal of 2000 apprenticeships by the end of the programme would likely be more than achieved. Currently over 650 apprentices were working on the project. At the start of the programme no Tier 1 supplier had EDI accreditation; now 15 out of 18 did, and 17 were Disability Confident.

Research showed the EDI, SEE (Skills Employment, Education) and EIR (Employee & Industrial Relations) Works Information requirements work added only about 1-2 per cent to indirect cost of contracts.

There were challenges, for example maintaining the gender balance of the supply chain workforce as the number of front-line operatives increased as the project proceeded.

Other organisations would need the will and the skill to do it, if they wished to follow suit, including in diversity and procurement specialities and drawing the two together. Asked whether others would indeed follow suit, Mark noted that suppliers worked for other contractors too so best practice would be shared.

Asked about advice on how to get suppliers to report data to Tier 1s, Mark replied it was a contractual requirement and HS2 provided tools for Tiers 1 to cascade down, including helping suppliers encourage a reduction in the numbers of people preferring not to report protected characteristics. Providing the data was a contractual requirement in the Works Information/Scope of services.

The final speaker was Sharon Slinger, who spoke from a supplier perspective.

Sharon emphasised the size of the sector, including the numbers employed, and therefore its impact.

FM tended to have longer term contracts, which gave good opportunity for EDI planning. Predominantly there were good client relationships, as suppliers were embedded in front line organisations and could work together with them to reflect client priorities. Front-line colleagues in particular were already diverse. For all these reasons the sector had great opportunities to advance EDI.

Challenges included will, and demonstrating the business case. Low profit margins and client priorities could both militate against EDI. Communication with those in remote sites could be a challenge. And TUPE could discourage long-term workforce planning.

It was important to ensure there was a strategy, not just a set of initiatives, incorporating inclusive leadership; inclusive and diverse workforce; collaboration with clients and the supply chain; social impact on communities; and an inclusive culture. 'Overhead' colleagues and colleagues on contracts all needed to be included, and front-line colleagues needed to be, and feel, involved.

Sharon asked how the procurement process could be improved in relation to EDI. Ways forward included increasing the tender evaluation score and ensuring clients had the skills to evaluate it; requiring a D&I manager on larger contracts; at mobilisation stage making sure a plan is in place; and effective contract management to make sure the client keeps its promises, including through KPIs. Collaboration between client and supplier on EDI was key, as was incorporating supply chains and SMEs in this work.

There was then discussion involving all participants, including on how to make sure these issues were priorities for clients as well as suppliers, and the relationship with wider issues such as payment of real living wage.

Asked specifically about the issue of social mobility, and data and measurement in relation to social mobility, the panel said the data here was often limited, but there were still ways of emphasising the importance of social mobility in the workforce.

There would be a willingness to focus on EDI if the business case was demonstrated, and the panel discussed the benefits they had found from such a focus - including skills and employee retention; productivity improvements, as employee well-being increased; innovation which came through diversity of thought; reputational benefits; as well as direct benefits through winning work as procurement practices evolved. EDI was linked to health and safety and could be included within that. There were established links between EDI focus and shareholder value.

Asked about international lessons, the panel said the United States had a different legislative base, but there were clear transferable lessons about building up the supplier base, in which area the US tended to be further advanced.

The Green Paper and proposed procurement changes in the UK may help, especially in relation to the subject matter of the contract, but key was organisations giving priority to the issue at a strategic and organisational level. There were opportunities to take this work forward under current rules, including through the CCS frameworks.

The BSA thanked all speakers and participants. These issues would be taken forward over the next few months.