



Guidance Note on Equity, Diversity and Inclusion in relation to Procurement

Background

The purpose of this note is to provide short guidance points on Equity Diversity and Inclusion (ED&I) and procurement, looking at how ED&I considerations are incorporated into commissioning policies and practice; the scope, within existing and proposed legislation and guidance, to do so; possible challenges; and responses to those challenges.

Equity, Diversity and Inclusion (ED&I) policies and practices aim to ensure fair treatment and opportunity for all. They bear reference to, but are not limited to, the protected characteristics under the Equality Act: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. Other aspects to be taken into account in terms of ED&I include socio-economic status.

This note is intended to have particular relevance for public sector commissioning authorities, but also to be of interest to private sector clients, suppliers and supply chains.

The note follows a seminar on the issue¹ organised by the Business Services Association, the LGBT+ in FM Network and Trowers & Hamblins LLP, and case studies submitted by organisations such as HS2 and National Highways.

ED&I

There are common opportunities and challenges in factoring in ED&I considerations in terms of the characteristics listed above, not least because there is intersectionality in terms of people's characteristics, but also particular opportunities and challenges with each one.

The experience of many suppliers is that the focus given to each varies between commissioning authorities, and also varies markedly between jurisdictions internationally.

Five strands of ED&I were identified by participants in the seminar: inclusive leadership, social impact on communities, diversity of leadership and workforce, inclusive culture and collaboration with clients and supply chain.

¹ [Equality-DI-and-procurement-seminar-report-1.pdf \(bsa-org.com\)](#)

'Why ED&I?'

As CIPD point out in relation to inclusion and diversity in relation to the workplace:

'Inclusion and diversity is good for business for many reasons; firstly it enables you reflect and understand your customer/client base better, a [Harvard Business Review study](#) found that when at least one member of a team has traits in common with an end user or client, the entire team better understands them. Secondly, research from Deloitte and McKinsey have shown that it can significantly increase your bottom line and ability to innovate. [Deloitte's research](#), which included the findings of seven major research studies, showed that I&D enhances innovation by about 20% and [McKinsey's report, Diversity Matters](#), examined data for 366 public companies across a range of industries in Canada, Latin America, the UK, and the US. They found that companies in the top quartile for racial and ethnic diversity are 35% more likely to have better financial returns than their non-I&D industry competitors. Lastly, but perhaps most importantly creating inclusive workspaces where all employees feel that they belong, that they can contribute to the business and thrive is the right and fair thing to do to'²

The OECD say:

'Full participation of diverse groups is not only an ethical imperative, it makes great sense also from an economic and social cohesion perspective. The economic case to justify measures promoting diversity and inclusion thus supplements the social justice obligation to promote inclusion and equal opportunity. There is a clear need to better understand under what conditions governments and employers can ensure inclusion, thereby harnessing the potential of a diverse populations more effectively'³

Specifically on the provision of services and infrastructure projects, clients we have spoken to highlight two reasons why ED&I is important to them: to attract a full range of talent, bringing different perspectives to the table, which is especially important when there are skills shortages; and, ultimately, to improve services, innovation and responsiveness to users in order to benefit fully the communities they serve.

It is for this latter reason that ED&I is an integral part of achieving value for money in the use of public funds.

Both factors apply equally to clients' own organisations and to suppliers and supply chains. This note focuses on the role of ED&I within public procurement and how it relates to suppliers and supply chains.

ED&I and Supply Chains

One way in which ED&I can be promoted is through diverse suppliers. The CIPD definition of a diverse supplier is 'one that is majority owned (51 per cent or more) by those from a protected characteristic such as gender, race, disability or sexual orientation'. CIPD have produced a guide to sourcing diverse suppliers⁴.

Clients also look at ED&I considerations across the supply chain, including suppliers which do not fall under this definition. This work will often be helped by making progress on wider considerations such as increasing the number of SMEs, VCSEs and local businesses in supply chains. However it is recognised that these considerations should be taken together, and that actions for example to encourage reporting on diverse characteristics should not unintentionally make it more difficult to attract more SME suppliers by increasing administrative burdens on them. Rather, by considering these priorities together, authorities and larger suppliers can help SMEs with their reporting requirements, as well as prioritising ED&I considerations, not least in helping them encapsulate actions they may already be taking and also in being realistic and proportionate about what is being asked.

This note relates both to encouraging a diversity of suppliers and to ED&I considerations being embedded throughout the whole supply chain.

² [How to source diverse suppliers | CIPD](#)

³ OECD report: [diversity-at-work-policy-brief-2020.pdf \(oecd.org\)](#)

⁴ [How to source diverse suppliers | CIPD](#)

Procurement and ED&I

Used correctly, procurement can be a very powerful tool for embedding ED&I principles across supply chains. The starting point needs always to be the ultimate objective of service improvement, innovation and responsiveness to users to benefit the communities served by the services in question.

This objective will more likely be achieved if the authority's strategy drives procurement behaviour on the ground, with the two being linked seamlessly and the principles outlined above running through the commissioning process from project inception through to management of the project or longer-term contract. ED&I factors need to be considered and factored in at every stage. That means ED&I is being driven by value for money considerations and is being embedded throughout the process rather than being an afterthought. The focus of this note is on contract delivery rather than the supplier itself, as this is an area which is often still lagging behind other social value initiatives. Part of this is about ensuring that suppliers have a robust approach to ED&I within their supply chains.

Despite this still being a developing area, there are some resources available. The Local Government Association for example has an advisory Equality Framework⁵ to assist councils, and this emphasises the importance of embedding ED&I 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 are taken into account.

These considerations can form part of, but are not confined to, social value metrics, as set out in frameworks such as TOMS which are widely used across the public sector.

'What?': The practicalities

1. Strategy

The starting point on ED&I for any organisation is its overall strategy, which should be more than a set of initiatives, and which should feature in the annual Corporate Plan.

ED&I incorporates inclusive leadership; diverse leadership and 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.

For all public sector client organisations, community priorities, including ED&I, need to be reflected in organisational priorities, so users and potential users of services receive the best service possible.

Such an overall strategy should then lead to the commissioning strategy, guided all the time by the principle of improved service outcomes and produced in consultation and co-design with the communities and service users affected - including, but not limited to, those with protected characteristics. This will influence public consultation exercises, including where they are advertised, as well as where procurement opportunities themselves are advertised further down the line.

There are advantages in inclusive standards being drawn up, so services meet the needs of communities with protected characteristics. This process should be community-led, with consultations held under Best Value legislation for example The Local Government Act 1999, section 3.

Making sure ED&I goals are reflected in the corporate strategy and the commissioning strategy should then mean they are incorporated at every stage of the process (some of which are outlined below). Authorities could reflect ED&I goals in the procurement board, their investment strategy, and their contract letting procedure rules. They should also think about how lots are divided, and whether specialist lots could speak to the needs of specialist communities.

⁵ [Equality Framework for Local Government | Local Government Association](#)

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

Many of the principles set out in the Cabinet Office's Sourcing Playbook⁶ for encouraging strong and effective markets and value for money apply to the application of ED&I principles to the procurement process too.

One of the commissioning authorities we spoke to conducted an in-depth equality analysis, which showed more attention needed to be paid to outcomes for people with disabilities and for those from a poorer background. Its efforts were therefore directed accordingly, including its partnership work with larger companies in order to achieve the outcomes it wanted.

2. Early Engagement

Early engagement with the market is crucial for stimulating improvement, and in this case in delivering a diverse supply chain, new ideas for promoting ED&I, and a sense of what is possible and feasible. Client organisations can and should also act as facilitators of suppliers who could meet the needs identified in the corporate and commissioning strategies.

As the Playbook states:

'Preliminary market engagement should actively seek out suppliers that can help to improve service delivery, including Small and medium-sized enterprises (SMEs) and Voluntary, Community and Social Enterprises (VCSEs) who are experts in the needs of service users and widely involved in the delivery of public services across the country'.⁷

Crucially, once the service outcomes have been identified, early engagement with the market will help to determine the possible ways in which the outcomes can be achieved, and the potential supply chain providers available to do so.

One of the commissioning authorities we spoke to recognised that they were not receiving sufficient engagement from diverse supply chains, and in particular from SMEs representing black and minority ethnic communities, in order to deliver desired outcomes for all the community it represented. It went out of its way to target market engagement by approaching proactively SMEs in the area, and also improved training especially at higher levels in order to enable their participation.

3. Screening and SQ

Once the nature of the contract to be put out to tender is clear, the screening and selection questionnaire (SQ) process can ask basic questions in relation to ED&I policies. For example they can ask if suppliers have ED&I policies in place and how they have approached ED&I before in examples of previous projects. As authorities are constrained at SQ stage to look at "backward"-looking questions, it is difficult to explore ED&I in any amount of detail with bidders. Although they can seek to review ED&I policies, it would need to be very clear what requirements were needed (and they need to be proportionate) before a bidder could be dismissed solely on the grounds of ED&I at SQ stage.

4. Invitation to Tender (ITT)

The ITT stage is crucial, as is the weighting given to different factors. At this stage authorities are permitted to ask "forward"-looking questions about how a bidder will deliver a particular project, and areas around the organisation and approach itself can be explored, as can supply chain and supply chain management. At this stage, bidders' approach and understanding of ED&I can be explored, along with how this understanding would impact on the services they were providing; how they would respond to the needs of particular communities or groups; and their proposals to address challenges in this area.

⁶ The Sourcing Playbook - GOV.UK (www.gov.uk)

⁷ Ibid., page 16

There is a legal requirement under the procurement rules that questions need to be relevant to the subject matter of the contract and must not discriminate or favour particular bidders.

As an example, one client we spoke to, who grouped together skills, employment, education and ED&I, noted that the difference between winning a major tender and coming second had been found to be around 3 per cent. So it weighted this grouping well above this threshold in order to give bidders a business case for ED&I.

Alongside increased weight being given to ED&I, it is important that clients have the skill and staff to evaluate it, so it does not simply become a tick-box exercise and they are not open to challenge.

For this client, the works information / scope of services made ED&I, and ED&I data reporting, a contractual requirement. Requirements for Tier 1 suppliers included: a relevant set of policies; recruitment reporting at each stage of the recruitment process; participation in ED&I 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 ED&I accreditation such as the National Equality Standard or Clear Assured.

A second client had a requirement that suppliers develop and then deliver against an evidence-based inclusion action plan (IAP), monitored and scored either on a quarterly or six-monthly basis. This focused on three priority performance areas: to create inclusive working culture, practices and environments that enable all to perform to their full potential; to consider and value the diverse needs of customers and neighbouring communities at all stages of the framework/scheme; and to develop wider supply chain capability around ED&I.

The IAP needed to include: the objectives (the issue to be addressed, such as under representation of a specific group); the current position (at the start of the contract); the actions to be carried out to meet the objectives; the time frames for doing so; the person responsible for this action; and provision for regular updates.

The actions that drive change were then shared on a Teams ED&I site for all suppliers to see and replicate if they wish.

A 'lite' version was being created for Tier 2 suppliers and below.

A third client gave 20 per cent weighting to ED&I considerations. Details of how bidders achieved value management from the outset, and how their experience could be applied to eight specified Fairer Future Commitments, were also required. Extended interview for some of the candidates was particularly effective in giving the smaller, emerging and diverse practices a platform to showcase their expertise.

5. Contract Management

The Playbook states: 'Effective contract management is essential to drive value for money and deliver successful contractual outcomes'⁸.

This is as true for ED&I considerations as for any other. It requires staff experienced and trained in the topic. For larger contracts it may require a manager allocated specifically to ED&I.

Reports on supplier ED&I performance can be taken to the senior leadership including any procurement board.

⁸ Ibid., page 71

6. Data and Data Reporting

One of the biggest challenges encountered on this issue has been the absence in many cases of reliable, consistent data on a historic basis. One of the advantages of the tendering process is to provide opportunity to require the provision of such data, but in many cases it is not available prior to such a process or prior to ED&I considerations being incorporated into an organisation's strategy and therefore its procurement policies. One of the challenges is to recognise this, and to ensure that data is being collected and used on a like-for-like basis, or at least that it is cleansed appropriately before comparisons are made over time.

7. Working in Partnership

One final lesson to be taken from the Playbooks relates to the importance of partnership and collaboration:

'For complex projects, experience has demonstrated that a partnership model with the principles of collaboration, openness, transparency and flexibility based on contractual delivery can be beneficial in driving successful outcomes.

Critical success factors of a partnership model include a focus on service delivery by both partners, clear roles and responsibilities, a shared understanding of how to effectively resolve disputes, and a collaborative culture.'⁹

Collaboration between client and supplier on ED&I is key, as is incorporating supply chains and SMEs in this partnership work.

This includes giving Tier 1 and smaller suppliers alike the advice and support they need, and Tier 1s cascading this down. One client referenced support for the supply chain as including free diversity and socioeconomic data, covering all relevant local authorities; best practice models and training videos; databases of community organisations; and a skills, employment, education, ED&I best practice forum for all Tier 1 suppliers.

Another ran masterclasses and 'lunch and learn' sessions, where suppliers shared more details on those actions that were driving change. A Supplier Diversity Forum was also established so good practice could be shared and catalysts for change created to drive change within the supply chain. In December 2021 it collated data on key and strategic suppliers to create an 'ED&I league table', which showed a clear correlation between attending events and learning from others and how well they delivered ED&I in the client's projects.

The Legal Backdrop

The legal backdrop to these issues is the Equality Act and the Public Contracts Regulations.

The Equality Act makes it clear that contractors must comply with their public sector equality duty, which should be supported by and integrated into the procurement function.

However in doing so they must have regard to the Public Contracts Regulations 2015 (the PCR), under which criteria must not discriminate or favour particular economic operators.

Under proposed government reforms to procurement legislation, the principle remains that factors to be taken into account still have to be related to the subject matter of the contract.

Furthermore, for councils, the Local Government Act 1988, section 17, makes it clear that councils should not have regard to certain non-commercial considerations. However, this should not deter integration of subject-matter-related ED&I considerations into procurements.

⁹ Ibid., page 69

Sector-Specific Practice and Issues

The provision of service and infrastructure projects covers a wide range of service areas. Inevitably in some service areas, ED&I practice is more advanced than in others. This means there may be lessons and best practice considerations that can be shared.

At the same time there are sector-specific issues which service providers and clients alike should factor into their work.

Where facilities management contracts for example are longer term, this gives good opportunity for ED&I planning. Predominantly in this sector there are good client relationships, as suppliers are embedded in front-line organisations and could work together with them to reflect client priorities. In many cases front-line colleagues in particular already reflect ED&I considerations. For all these reasons the sector has great opportunities to advance ED&I.

Challenges in the FM sector, however, can include demonstrating the business case where margins can be low and client priorities may lie elsewhere. Furthermore, communication with those in remote sites could be a challenge, and applied in certain ways TUPE could discourage long-term workforce planning.

In the case of construction, the PAS91 SQ provides a standard list of the questions that are typically asked of suppliers at the pre-qualification stage of construction tendering. It is a recommended common minimum standard for construction procurement.

In the case of infrastructure provision, authorities are increasingly sharing relevant data on diversity of talent in the sector. HS2, National Highways, Network Rail and Transport for London have run an annual data benchmarking activity to provide a picture of the diversity of talent within the sector. SMEs are invited to take part and make up a third of submissions. In collaboration with the Supply Chain Sustainability School an online tool has been developed, and each year there has been an increase in suppliers submitting better quality data, with reductions in ‘unknown’ and ‘prefer not to say’ in both the ethnicity and disability categories. Recently there were over 220,000 pieces of data, which far exceeds the workforce data held by ONS for the sector.

This data collection activity has influenced the Infrastructure client group, Construction Leadership Council and the Major Projects Association who are promoting a similar approach.

Many infrastructure and service providers also work with organisations such as the Supply Chain Sustainability School to assess ED&I maturity and be signposted to resources which would help them improve.

Further resources available

Case studies have been provided to the BSA by HS2¹⁰ and by National Highways¹¹.

Other authorities with established policies in this area include Southwark Council and their work with the LHC on the Architect Design Services ADS1.1 Framework for use across London, which gives additional focus to ED&I and social value-related criteria¹².

In addition, there has been substantial work done on supplier diversity, including on how to take into account ED&I considerations, by CIPS [Supplier Diversity Tools \(cips.org\)](https://www.cips.org/Supplier-Diversity-Tools) and by CIPD [How to source diverse suppliers | CIPD](https://www.cipd.com/resources/insights/articles-reports/2018/07/how-to-source-diverse-suppliers), as well as by [The UKs Leading Supplier Diversity Organisation | MSDUK](https://www.msduk.org.uk/)¹³ and [Women Owned \(womenownedlogo.com\)](https://www.womenownedlogo.com/) and [weconnectinternational.org](https://www.weconnectinternational.org/).

The Supply Chain Sustainability School¹⁴ has resources including training for supply chains on Fairness Inclusion and Respect.

¹⁰ [Equality-DI-and-procurement-seminar-report-1.pdf \(bsa-org.com\)](https://www.bsa-uk.org/~/media/BSA/Reports/Equality-DI-and-procurement-seminar-report-1.pdf)

¹¹ [National Highways Case Study: Equality, Diversity and Inclusivity, and the procurement process - BSA \(bsa-org.com\)](https://www.bsa-uk.org/~/media/BSA/Reports/National-Highways-Case-Study-Equality-Diversity-and-Inclusivity-and-the-procurement-process-BSA.pdf)

¹² [lse_ads1-1_frameworkguide_v1.pdf \(lhc.gov.uk\)](https://www.lhc.gov.uk/lse_ads1-1_frameworkguide_v1.pdf)

¹³ <https://www.msduk.org.uk/static/CIPS-Supplier-Diversity-1.pdf>

¹⁴ [Home - Supply Chain Sustainability School \(supplychainschool.co.uk\)](https://www.supplychainschool.co.uk/)