

**ANGUS COUNCIL**

**POLICY AND RESOURCES COMMITTEE – 2 DECEMBER 2014**

**EQUALITIES IN PROCUREMENT**

**REPORT BY THE HEAD OF CORPORATE IMPROVEMENT AND FINANCE**

**ABSTRACT**

This report summarises changes required to the council's procurement activity in accordance with the general and specific equality duties under the Equality Act 2010.

**1. RECOMMENDATION**

It is recommended that the Committee agrees to:

- (i) Approve the policy approach to delivering equalities through its procurement as set out in **Appendix 1** to this Report; and
- (ii) Remit to the Head of Corporate Improvement and Finance to apply that policy as a Procurement Guidance Note and communicate it to all procuring Services for application with immediate effect in accordance with Financial Regulation 16.3.2.

**2. ALIGNMENT TO COPORATE PLAN**

This report contributes as a whole to the local outcome(s) contained within the Angus Community Plan and Single Outcome Agreement 2013-2016.

**3. BACKGROUND**

**3.1** Public authorities have always had to comply with anti-discrimination law as employers and service providers. Until relatively recently the emphasis has been on case-by-case compliance, with enforcement largely in the hands of private individuals who have been adversely affected by discrimination.

**3.2** One of the key aims of the Equality Act 2010 was to introduce a new unified public sector general equality duty. The general equality duty requires Scottish public authorities to pay 'due regard' to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Equality Act 2010;
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and
- Foster good relations between people who share a protected characteristic and those who do not.

These requirements apply across the 'protected characteristics' which are, in relation to procurement: age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion and belief; sex and sexual orientation. The new duty replaces the three previous duties relating to race, disability and gender equality. The unified general equality duty came into force on 5 April 2011.

**3.3** In addition, in relation to procurement there is a specific equality duty which applies. The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 came into force in May 2012. The purpose of the specific duties is to further guide public authorities such as the council in their performance of the general equality duty. The procurement specific duty requires the

council to consider if the application of award criteria and conditions in relation to a given public procurement help it better perform the general equality duty.

#### 4. CURRENT POSITION

4.1 The Corporate Procurement Manager in consultation with the Equalities Officer has prepared a full Procurement Guidance Note (PGN 33) on Procurement and Equalities, a policy summary of which is attached as **Appendix 1** to this Report. It draws on (a) Tayside Procurement Consortium (TPC) guidance and (b) the legislation and guidance both from the Equalities and Human Rights Commission and Scottish Government's Commercial and Procurement Directorate

4.2 Guiding principles are set out in the policy summary. The key messages are that the Council will balance compliance with and promotion of equalities good practice with simplification of and minimisation of bureaucracy in its procurement process on a proportionate basis. Diversity and equality issues are considered while the contract specification is being designed. Where specification of equalities performance requirements is necessary, it will generally require qualitative tender evaluation and stipulation of weighted equalities criteria.

4.3 Application of the proposed policy centres around the carrying out of a procurement equalities impact assessment (a "PEIA") for relevant council procurement. It would not be proportionate to carry out PEIA and apply specific equalities requirements in every council procurement / contract, so the following (whole life) contract value thresholds are proposed, up to and including which such action is not required. These are:

- For construction works £500,000
- For social care services the EU public services contract threshold, currently £172,514
- For goods and all other services £50,000

4.4 The policy has been the subject of wide consultation within the Council. A short-life Equalities in Procurement Policy Group was formed to support development and ensure cross-Council development of the policy. The Group was made up of officers from the Resources (Corporate Improvement & Finance and Legal & Democratic Services), People (Quality & Performance Service) and Communities (Technical & Property Services and Regulatory, Protective & Prevention Services) Directorates. The draft policy has the approval of the Policy Group.

#### 5. PROPOSAL

5.1 It is proposed that the council adopt the policy relating to equalities and procurement set out as Appendix 1 to this report and forming the basis of draft Procurement Guidance Note 33. The work done to develop detailed council practice and procedure on complying with the general and specific duties in Angus Council procurement, to be applied in a proportionate and 'business friendly' manner, will bring the council into line with good procurement practice and ensure compliance with the relevant legislation.

5.2 If approved, it will be communicated to all procuring Services in the Council and embedded as part of the Council's Corporate Procurement Manual in accordance with Financial Regulation 16.3.2 which requires chief officers to arrange for regard to be had to it in carrying out devolved procurement activity within Services.

#### 6. FINANCIAL IMPLICATIONS

There are no Financial Implications arising for the Council as a direct consequence of approval of the recommendation in this Report. The Report recognises the balance between cost, quality and sustainable (social) outcomes that is implicit in pursuing best value as opposed to lowest price. Procurement-specific cost implications will be addressed by the Financial Regulations requirement to keep procurement costs within approved budgets. Non-delegated procurement proposals will also be subject to scrutiny and officers held accountable through the Procurement Authority Report process (in terms of Financial Regulation 16.8).

## 7. OTHER IMPLICATIONS

### 7.1 Risks

The risks arising for the Council from approval of this policy and the steps for mitigation of those risks are as follows:

<b><u>Risk</u></b>	<b><u>Mitigation</u></b>
There is a risk that the Equal Opportunities and Human Rights Commission will audit the Council's compliance with Equalities legislation and find non-compliance.	Adoption of the policy set out in this Report fully addresses this risk.
There is a risk of adverse impact on the Angus economy (and suppliers generally) from application of the extra compliance that this policy entails for them with potentially increased bid costs as a result.	The policy set out in this Report only applies to higher value procurement where equalities impact assessment on a proportionate basis is required so the impact is mitigated and it only applied where it is necessary.

### 7.1 Equalities

An Equalities Impact Assessment has been carried out.

### 7.3 Strategic Environmental Assessment (SEA)

On consideration of the Equalities and Procurement Policy it has been concluded that this policy is likely to have no or minimal environmental effect and the SEA Gateway will be notified accordingly as required by the Environmental Assessment (Scotland) Act 2005. This notification will be published by the Gateway on the Public Register maintained to that end.

**NOTE:** No background papers, as detailed by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

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#### **List of Appendices:**

1. Procurement Policy Summary: Procurement and Equalities