



Legal Guide

guidance and templates for the procurement of social housing contracts

maximising the recruitment and retention of tradeswomen

Tradeswomen Into Maintenance Project

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Making People *Smile*

FOREWORD

Alison Inman OBE, President of the Chartered Institute of Housing

Social housing maintenance matters. Almost any survey of tenants would put 'repairs' pretty much at the top of their concerns. Billions of pounds are spent each year on planned maintenance and responsive repairs.

Only 1% of people working on the tools in the construction sector are women and there is no evidence to suggest that the numbers in social housing building maintenance are any better. We have an ageing workforce and, at the same time, we have a skills crisis with around 19% of trade operatives due to retire in the next decade. Yet despite the progress made by women entering other industries, social housing building maintenance trades remain almost exclusively male. The Tradeswomen into Maintenance project aims to do something about that.

This project was sponsored by the Construction Industry Training Board and (CITB) Mears Group. It was the brainchild of Jane Nelson, Group Executive Director of Mears, and aims to increase the number of women working in carpentry, plumbing, painting and decorating, plastering, bricklaying, gas engineering and all of the other trades in social housing maintenance. The project's Steering Group consisted of representatives from across the housing sector and I was pleased to represent the Chartered Institute of Housing (CIH).

CITB is committed to widening the diversity of the construction industry and it is to be commended for encouraging action in our sector through its support of this project. Mears Group is a well-known maintenance contractor and its support of this important initiative clearly demonstrates a strong commitment to developing a diverse workforce which reflects the many communities which Mears serves up and down the country.

This Legal Guide could be a game changer. I hope it will give organisations the opportunity to embed their equality and diversity commitments within the procurement process and give those that do so the edge in providing a diverse and culturally-sensitive service. It includes legal clauses drafted for social housing procurers to include in tender documents to encourage more tradeswomen into the sector. Please help share it as widely as possible.

I commend this Guide and would particularly like to thank Andrew Millross, partner and Kate Watkins, associate at Anthony Collins Solicitors, for their advice, assistance and diligent drafting.

CIH has its roots in the 19th century and the pioneering work of Octavia Hill. The Association of Women Housing Managers was established in 1916 by women who had worked with Octavia and later went on to become the CIH. The roots of the social housing sector lie with these women and it is fitting that the sector is now increasing its efforts to ensure that women are represented at every level of our organisations and across contractor partners.

I am always impressed and delighted by the work that I see our members doing to tackle inequality and enhance services to tenants.

Repairs and the state of their homes really matter to tenants. We need more women on the tools carrying out those important repairs and this Legal Guide can help achieve that.



A handwritten signature in black ink, which appears to read 'Alison Inman'.

*Alison Inman OBE
President, Chartered Institute of Housing*

This Legal Guide is one in a series of booklets produced by the Tradeswomen into Maintenance project all aimed at increasing the number of women trade operatives in social housing maintenance. Others in the series are:

- *Resource Directory – Signposting for girls and women wanting to train or work in the manual trades in social housing maintenance sector.*
- *Research Report – The recruitment and retention of tradeswomen in social housing maintenance.*
- *Best Practice Guide – Making social housing landlords and maintenance companies open and welcoming to tradeswomen.*

A Schools Toolkit, which is mapped to the national curriculum for schools and colleges in England and Wales, has also been produced as part of the Tradeswomen into Maintenance project. Details on this toolkit, the above guides and other helpful information can be found at www.mearsgroup.co.uk





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1. Introduction

Contract clauses and procurement provisions to maximise opportunities for women to pursue maintenance trade careers (eg as carpenters, gas engineers, electricians, plasterers, painters and decorators, plumbers etc) fall into two main types:

- “negative strategies” to remove barriers to full participation through, for example, eliminating unlawful discrimination (including harassment and/or victimisation); or
- “positive strategies” to incentivise employers to take positive steps to encourage women into maintenance trade careers through things like:
 - providing role models; and
 - specifically encouraging people from groups that are under-represented in the workforce (such as women) to apply for and take-up training, mentoring, and promotion opportunities (that are open equally to women and men).

The question of how to encourage women into maintenance trade careers should be considered at each stage of a procurement process. This includes when:

- drafting a procurement strategy/policy;
- writing specifications;
- deciding which bidders to invite to tender (from amongst those meeting the minimum selection standards) when any procedure other than the open procedure is used;
- setting contract award criteria and the tender submission requirements (eg Method Statements) associated with them;
- drafting contract conditions; and
- managing and monitoring contracts to secure the delivery of contractual obligations (set out in the Method Statements and/or Contract Conditions) aimed at encouraging women into maintenance trade careers.

Given the widespread use of framework agreements, these considerations need to be taken into account at the point at which these framework agreements are being procured. It is often too late to do this when contracts are being called off from the framework.

In this guidance, we use the terms “Client”, “Contractor”, “Subcontractor” and “Works” (capitalised, as they are likely to be defined terms in the contract). Where the chosen form of contract uses different terms (eg Employer / Service Provider / Supplier), the template clauses below will need to be amended to use the terminology of that contract.



2. Legislative background

Equality Act and discrimination

The Equality Act 2010 lists certain attributes as “protected characteristics”. Those most likely to be relevant to women in maintenance trades are:

- sex;
- pregnancy and maternity;
- marriage and civil partnership;
- sexual orientation; and
- gender reassignment.

Equality and diversity legislation distinguishes between:

- positive discrimination (which is unlawful, other than in very limited circumstances where two candidates are identical in all other respects); and
- positive action (eg to encourage applications from under-represented groups) to seek to achieve a more representative gender balance in the workforce.

There are two potential legal justifications for action to promote equality.

The Public Sector Equality Duty

“Public” (ie local and central government) authorities have a duty under the Equality Act 2010 to:

- eliminate discrimination;
- advance equality of opportunity between people who share a “protected characteristic” and people who do not; and
- foster good relations between people who share a “protected characteristic” and people who do not.¹

This is known as the “public sector equality duty”. It also requires a public body to have due regard to the need to:

- remove or minimise disadvantages suffered by persons who share a “protected characteristic” (for example, women) that are connected to that characteristic (ie ways in which they are disadvantaged because they are women);
- take steps to meet the needs of those people who share that characteristic, where those needs are different from those that do not share that characteristic; and
- encourage those people to participate in activities in which their participation is disproportionately low.

There is specific authority for treating some people more favourably than others where this is necessary to comply with the Public Sector Equality Duty, but subject to the overriding requirement that this does not involve doing something (eg discriminating) which is otherwise prohibited under the Equality Act 2010.

¹ <https://www.gov.uk/government/publications/public-sector-quick-start-guide-to-the-public-sector-equality-duty>

Positive Action

Positive action to advance equality is lawful where there is a reasonable belief that people who share a particular characteristic (eg women) are under-represented in an activity, or their participation in that activity is disproportionately low when compared to those who do not share that characteristic (i.e. men). Where this is the case, equality legislation enables steps to be taken to overcome that disadvantage or to increase participation by the under-represented group in that particular activity. This could include recruiting a woman to a position instead of a man simply on the basis of her gender where they are both equally able to undertake that job and women are under-represented in the trade concerned.

Strategies such as offering “women only” apprenticeships and/or providing “women-only” training and/or holding “women only trade events” could be steps taken towards achieving this. However, it would be difficult to refuse to allow a man to attend a training session that is intended (and advertised) for women only, as this would be direct discrimination. Practically, it is unlikely that many men would want to attend such sessions though. For this reason though, it would be better to present these kinds of course as being “aimed mainly at” or “intended particularly for” women.

The Public Services (Social Value) Act 2012

The Public Services (Social Value) Act 2012² requires contracting authorities in England (it does not apply in Wales) commissioning contracts for services (and frameworks where most of the call-offs will be for services) to consider whether they can secure social, environmental or economic benefits through their procurement. These benefits can include increasing opportunities for women to pursue maintenance trade careers.

Non-commercial considerations

Section 17(5) of the Local Government Act 1988 prohibits local authorities from taking account of “non-commercial considerations”, in procurements. These non-commercial considerations include, “the terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces”.

Best value

Best value legislation³ (“the Best Value Order”) overrides this (for best value authorities) to the extent that this is relevant to the achievement of best value. The Best Value Order means that local authorities can now take account in a procurement how far contractors encourage women into maintenance trade careers, provided this is considered to be necessary to secure “best value”. It is easier to justify doing this if steps to encourage women into maintenance trade careers are explicitly made part of what is being procured, rather than being an “added extra”. This can be done by making these steps contractual requirements (see section 5 below).

The suggested template clauses below are intended mainly for procurements subject to the Public Contracts Regulations 2015 (“PCR 2015”). With one exception, they apply equally to contracts values below the EU tendering thresholds, as well as above them. The exception is that Regulation 111 PCR 2015 prohibits a selection stage (and hence use of the “scored” selection questions in section 3) for contracts (including works contracts) valued below the EU tendering threshold for services/supplies.

² <https://www.gov.uk/government/publications/procurement-policy-note-10-12-the-public-services-social-value-act-2012> and <https://www.gov.uk/government/publications/social-value-act-information-and-resources/social-value-act-information-and-resources>

³ *The Local Government Best Value (Exclusion of Non-commercial Considerations) Order 2001 (SI 2001 No 909) made*

Devolved jurisdictions

This guidance is based on the law of England. Scotland and Northern Ireland are separate legal jurisdictions and this guidance is not written for those jurisdictions.

Procurement is a devolved function in Wales. PCR 2015 apply in Wales, other than Part 4. Welsh Government guidance is different from that applying in England. Unlike in England, where there is a legal obligation to “have regard” to Cabinet Office guidance (as issued by the Crown Commercial Service (“CCS”)) there is no legal obligation to have regard to Welsh Government guidance. The Welsh Government have instead set out their ‘expectations’ in a “Procurement Statement” ⁴. Selection is carried out through a questionnaire which is built up on the SQuID portal ⁵.

⁴ under Section 19 of the Local Government Act 1999

⁵ <http://gov.wales/topics/improvingservices/bettervfm/publications/procurement-policy-statement/?lang=en> accessed via <https://www.sell2wales.gov.uk>



3. Selection of Tenderers

Where a “selection” (previously called a “prequalification”) stage is included in the procurement of a contract with a value above the EU tendering threshold for services or supplies, the Client can use that stage of the procurement to assess each prospective bidder’s expertise (technical and professional ability) to create opportunities for women to pursue maintenance trade careers. Contractors with greater experience and expertise of this can be awarded higher marks in that stage of the procurement.

This does not apply when the Client is using the “open procedure” under the EU procurement rules. It does apply to procurements where the restricted procedure, the competitive procedure with negotiation, or competitive dialogue procedure is used.

Where the CCS standard Selection Questionnaire (SQ) is used, questions about this need to be asked as “Project Specific questions”. Where PAS 91 is used, they are “Additional Questions”.

Although these questions could potentially be pass/fail (e.g. “please confirm you have experience of ...”), Clients are more likely to make them scored questions.

Sample (scored) questions are set out below:

Sample SQ project specific (or PAS 91 additional) Scored Questions	
Project specific questions (scored)	
1.	<p>Please set out your expertise and experience of:</p> <ul style="list-style-type: none">• encouraging women into maintenance trade careers in your organisation (eg as carpenters, gas engineers, electricians, plasterers, painters and decorators, plumbers etc), for example by encouraging them to apply for apprenticeships and maintenance and trade jobs;• supporting women in those careers; and• promoting maintenance trades as worthwhile careers for both women and men. <p>Give practical examples of the strategies you have adopted, any training given to your workforce, any external organisations you have worked with and any successes you have had.</p>
2.	<p>Please explain what experience you have of implementing strategies that seek to remove barriers to the full participation of groups (including women) that are under-represented in the maintenance trades workforce (compared to the community generally) through, for example, eliminating unlawful discrimination, harassment and/or victimisation and ensuring equality of opportunity.</p>

The scoring methodology for these questions is likely to assess prospective bidders’ answers according to how far each bidder’s answer demonstrates that they have the technical and professional ability required to deliver the requirements of the contract.

If this methodology is used, the Client needs to set out the technical and professional ability the Client “requires”. Sample wording is set out below (for both of the above questions):

SQ / PAS 91 – Scoring table - Client’s Requirements (in terms of technical and professional ability)	
1.	<p>The Client requires a Contractor with comprehensive experience of, and expertise in:</p> <ul style="list-style-type: none">• encouraging women into maintenance trade careers within their organisation;• supporting them in those careers; and• promoting maintenance trades as worthwhile careers for both women and men.
2.	<p>The Client requires a Contractor with comprehensive experience of, and expertise in delivering strategies that remove barriers to the full participation of groups (including women) who are under-represented in the maintenance trades workforce, including through having taken effective and practical steps to eliminate unlawful discrimination, harassment and/or victimisation.</p>

Under Regulation 111 PCR 2015, the above scored selection questions cannot be used when procuring a contract (even a works contract) with a value below the EU tendering threshold for services. A scored prequalification/selection stage is prohibited for these procurements.

4. Invitation to Tender stage

4.1 Contractual requirements

Client should explain in the Invitation to Tender ("ITT") (or equivalent, such as the Invitation to submit Initial Tenders / Invitation to Participate in Dialogue, depending on the procurement process being used) what the Client is seeking through the Contract. This explanation should include an explanation of any contractual requirements for promoting opportunities for women in maintenance trades and supporting them in those trades.

There are two possible approaches a Client could take to these contractual requirements:

- "a Client-led approach" which involves setting out in the Contract specific steps that the Contractor is required to take in relation to increasing opportunities for women in maintenance and trade careers and supporting them in those careers. These steps could be negative (in terms of avoiding unfair discrimination, harassment and victimisation) or positive (in terms of adopting specific recruitment practices (e.g. where and how jobs are advertised) or training approaches or providing specific support, etc); or
- "a Contractor-led approach" which involves asking the Contractor to specify in a Method Statement (which is evaluated through the award criteria) the steps the Contractor proposes to take to:
 - encourage women into maintenance trade careers;
 - support them in those careers; and
 - promote construction trades as worthwhile careers for both women and men.

A template can be provided for this Method Statement.

All steps (specified or evaluated) must be relevant to the subject-matter of the contract i.e. they should relate to the workforce to be employed on the contract and not the Contractor's workforce generally.

Example wording is set out in the table below. This will need to be tailored to the specific contractual requirements that are being requested (see Section 4.2).

Sample ITT wording
<p>The Client wishes to:</p> <ul style="list-style-type: none">• improve the representation of women in the workforce delivering the Works, so as to minimise any gender imbalance within that workforce;• encourage women into maintenance trade careers;• ensure they are supported in those careers; and• promote construction maintenance trades as worthwhile careers for both women and men;• seek to eliminate unlawful discrimination (including sexual harassment and victimisation) within the workforce delivering the Works; and• ensure equality of opportunity particularly for women and other groups that are under-represented within the workforce delivering the Works in recruitment, pay, training, and transfer and promotion to and within that workforce. <p>[Details of specific steps the Contractor will be required to take are set out in Schedule [X] to the draft Contract at Appendix [X] to this ITT.]</p> <p>Bidders will [also] be required to provide a Method Statement setting out the steps that they propose to take to achieve these objectives. This Method Statement will be assessed as part of the evaluation of Tenders in accordance with the award criteria set out in Appendix [X] to this ITT.</p> <p>The Contractor will also be required to provide an annual progress report (using the proforma set out in Schedule [X] to the draft Contract at Appendix [X] to this ITT) setting out actions taken, progress achieved and actions to be taken in the following year to achieve these objectives.</p>

4.2 Tender submission requirements and Method Statements

As long as actions (whether specified by the Client or Contractor) to encourage women into maintenance trades and support them in those careers are made part of the subject matter of the Contract (see paragraphs 4.1 above and 5 below) the Client can ask questions at tender stage about those actions.

Sample wording, covering both the Client-led and Contractor-led approaches, (as set out in paragraph 4.1 above) is set out in the table below.

Sample Tender submission requirements wording

Bidders must provide a Method Statement [using the proforma attached at Appendix [X] to this ITT] setting out the steps they will take in relation to the workforce to be deployed on the Contract (including Subcontractors and their workforce) to:

- improve the representation of women in the workforce delivering the Works, so as to minimise any gender imbalance within that workforce;
- encourage women into maintenance trade careers;
- support them in those careers;
- promote maintenance trades as worthwhile careers for both women and men;
- seek to eliminate unlawful discrimination (including sexual harassment and victimisation) within the workforce delivering the Works;
- ensure equality of opportunity, particularly for women and other groups that are under-represented within the workforce delivering the Works in recruitment, pay, training, and transfer and promotion to and within that workforce; and
- [comply with their contractual obligations in Schedule [X] to the draft Contract at Appendix [X] to this ITT.]



4.3 Template Method Statement

The proforma Method Statement below makes reference to the Contract clauses set out in Section 5. Where different Contract clauses are used, the proforma should be adjusted to reflect those contract clauses.

	Template Method Statement
	Tenderer:
	Note: Before completing this proforma Method Statement, Tenderers are advised to read Schedule [X] of the draft Contract provided by the Client. Definitions used in this Method Statement are those in the draft Contract at Appendix [X] to this ITT.
1.	<p>Please set out, in relation to the workforce you plan to employ in carrying out the Works, what measures you propose to take to:</p> <ul style="list-style-type: none">• improve the representation of women in that workforce, so as to minimise any gender imbalance within that workforce;• encourage women into maintenance trade careers;• support them in those careers;• promote maintenance trades as worthwhile careers for both women and men; and• require your Subcontractors used in delivering the Works also to do so. <p>Note: The Contractor will be asked to provide baseline equality and diversity statistics within [x] weeks of the Commencement Date to enable the Client to monitor the impact of these measures.</p>
2.	<p>Please set out below what arrangements you will put in place within the workforce that will deliver the Works to ensure that you will have due regard to the need to:</p> <ul style="list-style-type: none">• eliminate unlawful discrimination (including sexual harassment and victimisation) or any other conduct prohibited by the Equality Act 2010 within the workforce delivering the Works;• ensure equality of opportunity, particularly for women and other groups that are under-represented in the workforce delivering the Works in recruitment, pay, training and transfer and promotion to and within that workforce;• promote and foster good relations between people within the workforce delivering the Works who share a protected characteristic under the Equality Act 2010 and those who do not have that protected characteristic; and• require your Subcontractors used in delivering the Works also to do so.

4.4 Contract award (evaluation) criteria and scoring

Where arrangements to encourage women into maintenance trade careers and support them in those careers are part of the subject matter of the contract being procured, each Tenderer’s proposals to achieve this can be assessed through the award criteria as part of the “quality and technical merit” of each Contractor’s tender.

Sample award criteria are set out in the table below.

	Award criterion – area of evaluation	Multiplier	Maximum marks available
1.	<p>The quality and technical merit of each Tenderer’s proposed measures to:</p> <ul style="list-style-type: none"> • improve the representation of women in the workforce delivering the Works, so as to minimise any gender imbalance within that workforce; • encourage women into maintenance trade careers; • support them in those careers; • promote maintenance trades as worthwhile careers for both women and men; and • require Subcontractors used in delivering the Works also to do so. <p>(question [1] in the Method Statement template)</p>	x[]	[]
2.	<p>The quality and technical merit of each Tenderer’s proposed arrangements to:</p> <ul style="list-style-type: none"> • eliminate unlawful discrimination (including sexual harassment and victimisation) or any other conduct prohibited by the Equality Act 2010 within the workforce delivering the Works; • ensure equality of opportunity, particularly for women and other groups that are under-represented in the workforce delivering the Works in recruitment, pay, training and transfer and promotion to and within that workforce; • promote and foster good relations between people within the workforce delivering the Works who share a protected characteristic under the Equality Act 2010 and those who do not have that protected characteristic; and • require your Subcontractors used in delivering the Works also to do so. <p>(question [2] in the Method Statement template)</p>	x[]	[]

[The “multiplier” is to convert the score out of 5 or 10 (depending on the scoring table) into a score out of the maximum marks available (which is simpler if the maximum number of marks is a multiple of 5 or 10)]

Most award criteria use a scoring table where “marks” are awarded according to how far each Tenderer’s proposals (as set out in their Method Statement) meet the Client’s “requirements for the Contract”.

Sample wording for the “Client’s Requirements” in relation to the above award criteria is set out below.

ITT - Award Criteria - Client’s Requirements	
1.	<p>The Client requires the Contractor to have a strategy for and to implement practical, realistic and effective measures to:</p> <ul style="list-style-type: none">• improve the representation of women in the workforce delivering the Works, so as to minimise any gender imbalance within that workforce;• encourage women into maintenance trade careers;• support them in those careers;• promote maintenance trades as worthwhile careers for both women and men; and• require Subcontractors used in delivering the Works also to do so.
2.	<p>The Client requires the Contractor to have a strategy for and to implement practical, realistic and effective measures to:</p> <ul style="list-style-type: none">• eliminate unlawful discrimination or any other conduct prohibited by the Equality Act 2010 (including sexual harassment and victimisation) within the maintenance trades workforce delivering the Works;• ensure equality of opportunity, particularly for women and other groups that are under-represented in the maintenance trades workforce delivering the Works in recruitment, pay, training and transfer and promotion to and within that workforce;• promote and foster good relations between people within the workforce delivering the Works who share a protected characteristic under the Equality Act 2010 and those who do not; and• require Subcontractors used in delivering the Works also to do so.

5. Contract Conditions/ Specification

Where a Client wants the Contractor to take steps to encourage women into maintenance trade careers and support them in those careers, obligations to do so should be set out in the Contract. This can be done either in the Specification/ Employer’s Requirements/Brief or in the Contract Details or Contract Conditions.

The first two clauses in the table below are generic obligations. It is particularly important to include these (or similar provisions) when asking for a Method Statement from the Contractor. The Method Statement will set out the steps the Contractor will take to comply with those contractual obligations.

These generic obligations should be supplemented by obligations either:

- to take the specific steps the Client specifies in clause [].3; and/ or
- under clause [].4, to comply with the Contractor’s Method Statement setting out the steps the Contractor is proposing to take.

Sample contract conditions	
[].1	<p>In delivering the Works the Contractor shall undertake and shall require Subcontractors to undertake measures to:</p> <ul style="list-style-type: none">• improve the representation of women in the workforce delivering the Works, so as to minimise any gender imbalance within that workforce;• encourage women into maintenance trade careers;• support them in those careers; and• promote maintenance trades as worthwhile careers for both women and men.
[].2	<p>In delivering the Works, the Contractor shall undertake and shall require Subcontractors to undertake measures to:</p> <ul style="list-style-type: none">• eliminate unlawful discrimination (including sexual harassment and victimisation) or any other conduct prohibited by the Equality Act 2010 within the workforce delivering the Works;• ensure equality of opportunity particularly for women and other groups that are under-represented in the workforce delivering the Works in recruitment, pay, training and transfer and promotion to and within that workforce; and• promote and foster good relations between people within the workforce delivering the Works who share a protected characteristic under the Equality Act 2010 and those who do not have that characteristic.

[].3	<p>The steps to be taken by the Contractor under clauses [].1 and [].2 above shall include:</p> <ul style="list-style-type: none"> • <i>[Client to specify steps or omit this clause].</i>
[].4	<p>In delivering the Works, the Contractor shall comply with and shall require Subcontractors to comply with the Contractor's Method Statement at Schedule [X] to the Contract.</p>
[].5	<p>Within 20 (twenty) Working Days of the Commencement Date and on each anniversary of the Commencement Date, the Contractor shall provide equality and diversity statistics showing the breakdown of the Contractor's and each Subcontractor's workforce delivering the Works. This breakdown shall be given according to whatever protected characteristics the Client requires and shall be provided in whatever format the Client reasonably requires.</p>
[].6	<p>On each anniversary of the Commencement Date, the Contractor shall provide the Client with a Progress Report in the form set out in Schedule [X]:</p> <ul style="list-style-type: none"> • setting out the steps the Contractor has undertaken and its Subcontractors have undertaken to comply with the Contractor's obligations under clauses [].1 to [].4; and • setting out the impact that those steps have had within the workforce involved in the delivery of the Works. <p>The Progress Report shall include an update of the statistics provided by the Contractor under clause [].5 together with such additional monitoring information that the Client requires in relation to the matters referred to in that clause.</p>
[].7	<p>The Contractor shall comply with all reasonable requests by the Client that additional specific measures be taken in relation to compliance with the Contractor's obligations in this clause [].</p>

The above clauses refer to an annual "Progress Report". A template is provided on the next page.

Template progress report

Schedule X Form of Progress Report

1. Representation of women

The measures the Contractor has taken in the last 12 months to:

- improve the representation of women in the workforce delivering the Works, so as to minimise any gender imbalance within that workforce;
- encourage women into maintenance trade careers;
- support them in those careers; and
- promote maintenance trades as worthwhile careers for both women and men,

are as follows:

- []; and
- []

The measures the Contractor will take over the next 12 months are:

- []; and
- []

2. Promoting equality of opportunity

The measures the Contractor has taken over the last 12 months to:

- eliminate unlawful discrimination (including sexual harassment and victimisation) or any other conduct prohibited by the Equality Act 2010 within the workforce delivering the Works;
- ensure equality of opportunity, particularly for women and other groups that are under-represented in the workforce delivering the Works in recruitment, pay, training and transfer and promotion to and within that workforce; and
- promote and foster good relations between people within the workforce delivering the Works who share a protected characteristic under the Equality Act 2010 and those who do not have that protected characteristic,

are as follows:

- []; and
- []

The measures the Contractor will take over the next 12 months are:

- []; and
- []

3. Implementation by Subcontractors

EITHER:

The measures the Contractor took to ensure that Items 1 and 2 above were implemented by Subcontractors delivering the Works over the last 12 months were:

- []; and
- []

OR

The Contractor has not used Subcontractors for any of the Works over the last 12 months (please tick) ☐

AND

EITHER:

The measures the Contractor intends to take to ensure that Items 1 and 2 above are implemented by Subcontractors delivering the Works over the next 12 months are:

- []; and
- []

OR

The Contractor does not intend to use subcontractors for any of the Works over the next 12 months (please tick) ☐

4. Impact of measures

The steps under 1 to 3 have had the following impact(s):

- []; and
- []

5. Updated equality and diversity statistics

The Contractor's updated equality and diversity statistics for the workforce delivering the Works as at the date of this Progress Report are:

- [];
- []; and
- []

Before imposing any contractual obligations, it is important for a Client to consider what remedies the Client will have (if any) for a breach of those obligations.

6. Remedies

A Client is unlikely to want to terminate the contract solely for breaches of these obligations even if they are persistent.

The most effective remedies here are therefore likely to be incentive payments or deductions for complying with or not complying with these contractual obligations. Where the Contract is let under a framework or the volume of work is variable, incentives could also include extra work.

Current case law on damages provides that any deductions must now be “commercially reasonable” rather than being a “genuine pre-estimate” of the Client’s (financial or economic) loss. Psychologically, though, it is better to incentivise a Contractor for implementing particular actions rather than penalising them for failing to do so.

Deciding what to incentivise, and how to measure what is being incentivised can be difficult. Any incentives or deductions should preferably be linked to actions that the Contractor takes or fails to take, rather than the actual composition of the workforce. Ultimately the composition of the workforce is outside the Contractor’s control, given the legal requirement not unlawfully to discriminate, although the actions of the Contractor will clearly influence who applies to join the workforce, who is recruited and who remains within the workforce.

Where the procurement process used is either the competitive procedure with negotiation or the competitive dialogue procedure, the proposed remedies can be explored during the negotiation or dialogue stage.

7. Contract Management

Contract monitoring provisions should monitor both inputs (steps taken by the Contractor) and outputs (the effect of those measures in terms of encouraging women into maintenance trade careers and supporting them in those careers). Monitoring outputs will help the Client and Contractor assess the effectiveness of the inputs.

As set out above, the issue of incentives / sanctions in relation to contractual provisions to encourage women into maintenance can be difficult. However, it is important that the Client does apply any sanctions/incentives that the Contract provides for. A failure to do so will signal to the Contractor that the Client does not consider compliance with these provisions to be important.

8. Other Possible Strategies Not Covered By This Guidance

There are a number of additional strategies that a Client could adopt to encourage women into construction maintenance trade careers and support them in those careers. These are listed here for “completeness” but not dealt with in detail in this guidance, since they are less likely to be adopted in “mainstream” procurements. They are:

- using Regulation 20 PCR 2015 to ringfence competition to Contractors whose main aim is the social and professional integration of “disadvantaged persons” and whose employees include at least 30% “disadvantaged persons”. This can include women within sectors, professions or industries where there is a gender imbalance that is at least 25% higher than the average gender imbalance across all sectors. However, this Regulation is available only where the main aim of the Contractor is the integration of the under-represented group into the workforce;
- excluding bidders under Regulation 57(8) PCR 2015 (as set out in CCS question 3.15 in the template SQ) for breaches of labour law, specifically the ILO Convention 100 on Equal Remuneration or 111 on Discrimination (Employment) and Occupation, where it is proportionate to do so;
- under Regulation 40 PCR 2015, engaging in preliminary market consultation to scope the capacity and willingness of Contractors to accept contractual obligations to take specific steps to:
 - encourage women into maintenance trade careers;
 - support them in those careers; and
 - promote maintenance trades as worthwhile careers for both women and men;
- choosing minimum selection requirements (e.g. in relation to turnover levels, insurance requirements, levels of experience etc) at the selection stage of a procurement process that is not under the open procedure, so as not to exclude bidders that may be more effective in:
 - encouraging women into maintenance trade careers;
 - supporting them into those careers; and
 - promoting maintenance trades as worthwhile careers for both women and men;

This is likely to be effective only where there is evidence that these hurdles to being invited to tender are more likely to exclude Contractors that are more effective in integrating women into the maintenance workforce (such as women-led start-up companies, for example); and / or deciding where to advertise contract opportunities to best effect (or, for a procurement via OJEU, considering where else to advertise such opportunities) so as to attract contractors that are more effective in integrating women into the maintenance trades workforce.



Tradeswomen into Maintenance Steering Group

- The Guinness Partnership • Sovereign • CIH • NHMF
- Nottingham City Homes • United Welsh
- Construction Youth Trust • National Federation of ALMOs
- Women into Construction • WISH
- Anthony Collins Solicitors LLP



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