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Bridging the Gap II

Disability-Inclusive Procurement

Guidance note





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Acknowledgment

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Disclaimer

This study has been carried out with the financial support of the European Union. Its contents are the sole responsibility of the author and do not necessarily reflect the views of the European Union.



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Abbreviations and Acronyms

ADA Americans with Disability Act

BtG-II Bridging the Gap II

CRPD Convention on the Rights of Persons with Disabilities

DAC Development Assistance Committee

EASPD European Association of Service Providers for Persons with Disabilities

EDF European Disability Forum

EU European Union

GDP Gross Domestic Product

GLAD Global Action on Disability

ICT Information and Communication Technology

IDA International Disability Alliance

IDDC International Disability and Development Consortium

ODA Overseas Development Assistance

OECD Organisation for Economic Co-operation and Development

OPDs Organisations of Persons with Disabilities

PPD Public Procurement Directive

SDGs Sustainable Development Goals

ToR Terms of Reference

UN United Nations

UNDESA United Nations Department of Economic and Social Affairs

UNDIS United Nations Disability Strategy

UNESCAP United Nations Economic and Social Commission for Asia and the Pacific



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Foreword

With financial support of the European Union (EU), Bridging the Gap (BtG) has developed a guidance note on disability inclusive public procurement practices. Its purpose is to inform and guide current and future processes and practices on disability inclusive procurement undertaken within the European Commission, EU member States' agencies and bodies in charge of international cooperation and non-EU countries in receipt of EU development aid, in the light of global and regional frameworks informed by the Convention on the Rights of Persons with Disabilities (CRPD).

The note has been developed through a comparative review of key literature, google searches, interviews with key informants and insight from a Learning Space held in Brussels in February 2020 where first results were presented and discussed.

Findings underline the importance of the engagement of OPDs/DPOs to enable them to participate in and have a leading role in all processes of procurement, with clear information on the CRPD and global and regional directives, and the relationship of the Convention to EU law and to EU aid. For maximum use by procurement agencies and suppliers informants emphasised that the note should be clear and straightforward in its language; be practical; demystify and decomplicate what too many think is a complex process; be useful for training and innovation; contain examples of best practice; outline key principles for suppliers and procurement officials; and encourage further learning.

The two annexes give the list of informants and the explanations of concepts underpinning disability inclusive public procurement.

I am grateful to BtG for this opportunity and to all the people who agreed to give me their time, experience and expertise.

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Section 1: Why the focus on disability inclusive public procurement?

The methodology employed consisted of a comparative review of key literature, follow-up google searches, interviews conducted with 15 informants¹, selected on the basis that they are all directly or indirectly working on disability inclusive public procurement issues and are informed and guided by global and regional frameworks derived from the Convention on the Rights of Persons with Disabilities (CRPD). The Learning Space which was conducted in Brussels at the end of February 2020, attended by disability inclusive public procurement experts and leading members of the disability community, contributed significant insights.

The overarching principle which should guide public procurement is to ensure that public money is never used in such a way that people are excluded.

The obligation to ensure accessibility is enshrined in Articles 2 and 9 of the CRPD which set out what States Parties must do ‘To enable persons with disabilities to live independently and participate fully in all aspects of life’.² The 2014 CRPD General Comment 2 on accessibility³ states in its introduction that ‘Accessibility is described as a precondition for persons with disabilities to live independently and participate fully and equally in society’. The General Comment outlines the strict application of universal design to all new goods, products, facilities, technologies and services in Articles 14 and 15, while Article 28 sets out the obligations of States Parties ‘to adopt, promulgate and monitor accessibility standards. If no relevant legislation is in place, adopting a suitable legal framework is the first step’.

The EU ratified the CRPD in 2010. EU provisions on accessibility and inclusion of persons with disabilities in public procurement can be seen within the EU Disability Strategy⁴ 2010-2020, which singles out Accessibility as one of its priority areas, together with Participation, Equality, Employment, Education and Training, Social Protection, Health, and External Action. The Public Procurement Directive (PPD) 2014/24/EU of the European Parliament and the Council of 26 February 2014 requires its Member States to utilize procurement to enhance accessibility.⁵

The “light regime” (Articles 74 to 77), covers procurement of some welfare services and day-care services and asks Member States to allow contracting authorities to take into account ‘the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness’ of the social service and ‘the specific needs of different categories of users (and) the involvement and empowerment of users and

¹ See Annex 1

² <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

³ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/033/13/PDF/G1403313.pdf?OpenElement>

⁴ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:en:PDF>

⁵ The Directive was established in the context of the European Disability Strategy.



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innovation'.⁶ The EU Accessibility Act⁷ gives further guidance. Wording in the 'Procurement and Grants for European Union external actions - A Practical Guide' (PRAG) in its second chapter under 'crosscutting issues' states that 'accessibility for disabled people needs to be taken into account by tenderers, candidates and applicants in the context of procurement and calls for proposals'.⁸

Numbers matter. The World Bank group in 2019 estimated that persons with disabilities are now constitute 15 percent of the global population, while one-fifth of this global total, or between 110 million and 190 million people, experience significant disabilities, with disability prevalence higher for developing countries.⁹ Across the EU approximately 120 million persons in the EU have some form of disability, constituting approximately 16 percent of its projected total population in 2020.

Trends also matter. In all countries and regions numbers of persons with disabilities are expected to increase exponentially over the coming decades, as a consequence of population ageing, longer life expectancy, and an increasing number of injuries resulting from natural disasters and conflicts, among other factors.

Money talks also. Public procurement is big business; OECD countries are estimated to spend 12 percent of GDP on public procurement.¹⁰ For the European Union, this percentage amounts to 17 percent of EU GDP, amounting to more than EUR 1.9 trillion annually.

In sum, disability inclusive public procurement is not only an obligation of government procurers and suppliers but provides concrete opportunities over a significant time to make specific gains in the area of disability inclusion and the realisation of disability rights. It is therefore of growing concern that this obligation may not be being systematically acted on. According to a 2012 EU survey seven out of ten Europeans believe better accessibility of infrastructure, products and services would significantly improve the lives of persons with disabilities, older persons and others with accessibility requirements.¹¹

This is not business as usual; it requires thinking and action to include those who can be outside the mainstream. As the diagram supplied by Professor Jutta Treviranus illustrates, inclusive design should cater for the 20 percent of the

⁶ See EASPD technical briefing note for more discussion on the Light Regime and public procurement in the care sector <https://www.easpd.eu/en/content/technical-briefing-note-eu-public-procurement-and-social-services>

⁷ <https://ec.europa.eu/social/main.jsp?catId=1202>

⁸ <https://ec.europa.eu/europeaid/prag/document.do?nodeNumber=2.5.5>

⁹ <https://www.worldbank.org/en/topic/disability>

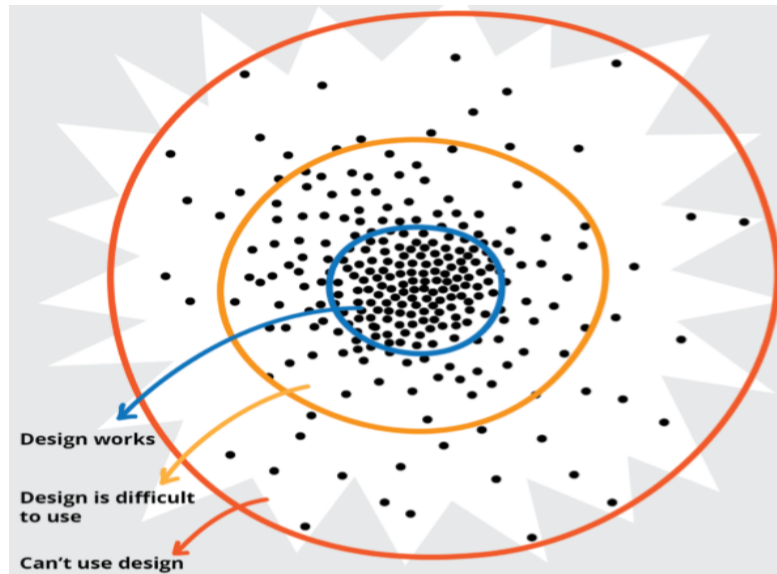
¹⁰ OECD 2019 Public Procurement Forum http://www.oecd.org/gov/public-procurement/PRINT_FINAL_Formatted-Forum%20agenda_FINAL.pdf

¹¹ https://ec.europa.eu/commfrontoffice/publicopinion/flash/fl_345_en.pdf page 10



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population with disabilities who lie outside the 'easier to reach' 80 percent at the centre of the star.¹²



¹² Slide contained in presentation [Disability Inclusive Procurement](#) given by Mia Ahlgren (Policy Officer, Swedish Disability Rights Federation) at the Brussels Learning Space. The figure of 80 percent is quoted in a 2019 article by Professor Jutta Trevinarus, [AI som inte diskriminerar](#) (AI that does not discriminate) <https://funktionsratt.se/funktionsratt-ratten-att-fungera-i-samhallet-pa-lika-villkor/ett-samhalle-for-alla/1148-2/artificiell-intelligens/ai/>



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Section 2: What is meant by obligation?

Global Frameworks

The Convention on the Rights of Persons with Disabilities (CRPD) and its General Comment n.2 on accessibility, Agenda 2030 and the Sustainable Development Goals (SDGs) and the United Nations Disability Strategy (UNDIS) are the sources of the overarching frameworks which guide, or should guide, disability inclusive procurement.

The CRPD and General Comment 2

The Convention on the Rights of persons with Disabilities (CRPD), now ratified by 181 countries, and its General Comment n.2 on Accessibility (CRPD/C/GC/2 2014), set out the obligation framework for global action on disability inclusive public procurement.

Within the CRPD a number of articles lay out obligations on physical and mental accessibility, including to services. These include Articles 2 (Definitions), 9 (Accessibility), 19 (Living independently), 24 (Education), 25 (Health) and 27(Work and employment).¹³ The CRPD clarifies that it is the interaction between the environment and the individual that is either disabling or enabling. Clear directives are given to provide inclusive services that can be procured. Article 9 of the CRPD's General Comment 2 of 2014 states, 'It is unacceptable to use public funds to create or perpetuate the inequality that inevitably results from inaccessible services and facilities'.¹⁴

The 2030 Agenda and the Sustainable Development Goals (SDGs)

'Societies will never achieve the SDGs without the full participation of everyone, including people with disabilities. We cannot afford to ignore or marginalize the contributions of 1.5 billion people'. (António Guterres, United Nations Secretary-General, to the 11th session of the Conference of State Parties to the Convention on the Rights of Persons with Disabilities, 12 June 2018).

The 2030 Agenda and its 17 inter-related SDGs are based on the international human rights framework, and the pledge to leave no one behind. This pledge asserts and makes the commitment that the 'dignity of the individual is fundamental and that

¹³ https://ec.europa.eu/commfrontoffice/publicopinion/flash/fl_345_en.pdf page 10

¹⁴ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/033/13/PDF/G1403313.pdf?OpenElement>



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the Agenda's goals and targets should be met for all nations and people and for all segments of society', including persons with disabilities.

The wording 'persons with disabilities' and disability is mentioned 11 times in the 2030 Agenda and specifically in the following SDGs: Goal 4 (Education), Goal 8 (Growth and Employment), Goal 10 (Inequality), Goal 11 (Accessibility of human settlements) and Goal 17 (Disaggregated data collection and monitoring). Five of the SDGs contain targets that make direct reference to persons with disabilities, and seek to make educational facilities accessible, to improve accessibility of the urban built environments, public spaces and public transportation, and to enhance access to ICT.

UNDESA has produced a useful infographic to illustrate SDGs disability inclusion.¹⁵

UN Disability Strategy (UNDIS)

The 2019 UNDIS, is 'a comprehensive strategy for ensuring that the United Nations system is fit for purpose in relation to disability inclusion. It provides a foundation for sustainable and transformative progress on disability inclusion through all pillars of the United Nations work'.¹⁶ It is not mandatory, but provides a clear roadmap for progressive realisation of the CRPD obligations.

Section 8 of the Strategy is the specific monitoring framework for disability inclusive public procurement. A technical note is being developed to guide implementation across the United Nations Department of Economic and Social Affairs (UNDESA) and all UN operational agencies. Disability markers are being discussed, as is a potential 'model UN policy on disability inclusive procurement' which could address the different elements identified in the technical note.

Underpinning the UNDIS is the requirement that organisational policy and procedure frameworks must be in place across the UN system. Key principles of the framework include:

- The process of procurement must be accessible for Persons with Disabilities.
- Tenders should include points given for accessibility standards.
- Disability inclusive suppliers that promote the employment of persons with disabilities should be given preference in contracts.

¹⁵ https://www.un.org/disabilities/documents/sdgs/disability_inclusive_sdgs.pdf

¹⁶ UNDIS page 1 https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2019/03/UNDIS_20-March-2019_for-HLCM.P.pdf



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Key partnerships are being developed with the procurement community in UNDESA and the UN agencies, as it is this community that has the responsibility for the tenders.

Accessibility in relevant EU documents

For the EU Member States obligation is contained within the Charter of Fundamental Rights of the European Union¹⁷ and its provisions on accessibility and persons with disabilities, and in its article 21 (on discrimination), and article 26 on the 'integration of persons of disabilities'¹⁸. Further guidance is given in the EU Disability Strategy and its revision¹⁹, the European Accessibility Act²⁰, which contains very relevant provisions on Public Procurement, its Public Procurement Directive (PPD)²¹ the Light Regime²² and PRAG.²³

The EU ratified the CRPD in 2010. The EU Disability Strategy 2010-2020²⁴ singles out Accessibility as one of its priority areas, together with Participation, Equality, Employment, Education and Training, Social Protection, Health, and External Action.

Recently, EU Commissioner Helena Dalli, in charge of Equality, announced that a new Strategy will be launched in 2021 and is expected to run until 2030. A consultation process began in late 2019 and is expected to continue throughout 2020 until the approval of the final document. There are calls for this strategy to be aligned to the implementation of the CRPD, and that its time period should coincide with the endpoint of the Global Sustainable Development Agenda.²⁵

The Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 preceded the EU Disability Strategy, setting out guidelines for 'the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts'. This Directive contains specific provisions on the 'integration or reintegration of people with disabilities in the labour market (para 28) and accessibility criteria for procurement (para 29) which states 'Contracting

¹⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:I33501&from=EN>

¹⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>

¹⁹ <https://ec.europa.eu/social/main.jsp?catId=1484>

²⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015PC0615&from=EN>

²¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014L0024-20180101>

²²

https://www.google.co.uk/search?source=hp&ei=IE1UXuWYF4SlytMPx4ilqAU&q=the+EU+Light+Regime+&oq=the+EU+Light+Regime+&gs_l=psy-ab.3...2943.10897..11770...0.0..0.239.524.2j1j1.....0....2j1..gws-wiz.....0i22i30j0i8i13i30.3xrLaEt3F7w&ved=0ahUKEwjspXmnevnAhWEknlEHUcEAIUQ4dUDCAg&uact=5

²³ <https://ec.europa.eu/europeaid/prag/>

²⁴ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:en:PDF>

²⁵ EDF are calling for 2021 to be named the Second European Year for the rights of persons with disabilities <http://www.edf-feph.org/edf-strategic-framework-2017-2021>.



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authorities should, whenever possible, lay down technical specifications so as to take into account accessibility criteria for people with disabilities or design for all users. The technical specifications should be clearly indicated, so that all tenderers know what the requirements established by the contracting authority cover'²⁶.

Reserved Markets (Article 20 of the 2004 Directive) allows Member States to reserve procedures for 'sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons or may provide for such contracts to be performed in the context of sheltered employment programmes, provided that at least 30 percent of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers'.

The Public Procurement Directive (PPD) 2014/24/EU of the European Parliament and the Council of 26 February 2014 requires EU Member States to take account of the CRPD (see article 3) ²⁷ and to utilize procurement to enhance accessibility.^{28,29}

All EU Member States were obliged to transpose the PPD into national law by April 2016 with penalties enforced on non-compliant member States. By July 2018, 24 EU member countries had transposed the PPD into national laws, with financial penalties imposed on Slovenia, Spain, Belgium, Ireland and Romania.³⁰

Section 3: Implementation of the obligation in the EU

Implementation of accessibility obligations for External Actions through public procurement is regulated by the PRAG (Procurement and Grants for European Union external actions - A Practical Guide)³¹ which was last updated in June 2019. There will be a technical update in 2020 concerning the electronic management of calls for tenders and contracts.

Key wording is found in PRAG's second chapter under 'crosscutting issues' (2.5.5) which reads, 'Concepts such as environmental issues, climate change, gender equality, **accessibility for disabled people** need to be taken into account by tenderers, candidates and applicants in the context of procurement and calls for proposals', and under Award criteria (2.6.11.4) which reads, 'Quality criteria may include elements such as technical merit, aesthetic and functional characteristics,

²⁶ <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32004L0018>

²⁷ Article 3 reads: When implementing this Directive, the United Nations Convention on the Rights of Persons with Disabilities ⁽⁶⁾ should be taken into account, in particular in connection with the choice of means of communications, technical specifications, award criteria and contract performance conditions.

²⁸ The Directive was established in the context of the European Disability Strategy.

²⁹ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32014L0024>: Article 76 reads: For all procurement which is intended for use by natural persons, whether general public or staff of the contracting authority, the technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities or design for all users.'

³⁰ https://ec.europa.eu/commission/presscorner/detail/en/IP_19_3030

³¹ <https://ec.europa.eu/europeaid/prag/>



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accessibility, design for all users, social, environmental and innovative characteristics, production, provision and trading process and any other specific process at any stage of their life cycle'³² (PRAG chapter 2 June 2019 revision).

One EU official stated that the accessibility provisions of the PRAG do not have 'a suitable legal basis'.³³ It is also unclear whether and to what extent the provision on accessibility is known about or monitored for compliance.

The European Association of Service Providers for Persons with Disabilities (EASPD) draws attention to the importance of funding models for procurement, stating that they '... are not neutral instruments, they affect the way social care and support services are developed. They have perhaps the biggest impact on the ability of a social service provider to develop better quality, more community-based services. It is crucial to develop a funding model with the right mindset and political vision in place and the specific needs of different categories of users (and) the involvement and empowerment of users and innovation'.³⁴

Section 4: What is disability inclusive public procurement?

Disability inclusive public procurement can be summarised as follows: choosing and rewarding contractors that employ persons with disabilities (preferential contracting); clear procurement criteria that rewards accessibility and universal design; and procurement practices for care and support services that are compliant with the provisions of the CRPD.³⁵

A visual representation is below.

³²

https://ec.europa.eu/europeaid/prag/?header_description=DEVCO+Prag+to+financial+and+contractual+procedures+applicable+to+external+actions+financed+from+the+general+budget+of+the+EU+and+from+the+11th+EDF&lng=58051&header_keywords=ePrag%2C+europa

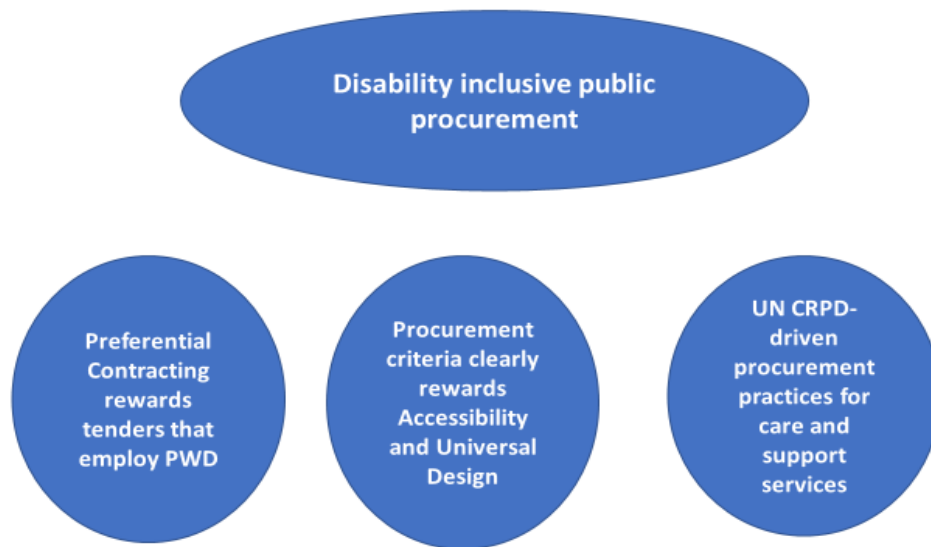
³³ Communication with researcher.

³⁴ See [EASPD: How to Fund Quality Care and Support Services: 7 key elements \(2019\)](#)

³⁵ Ibid page 11 'The European Institutions should evaluate firstly the impact of EU Public Procurement on the quality of social care, in particular in view of the UN CRPD and the EPSR. Such evaluation must include an in-depth consultation of all stakeholders involved, including representatives from social care providers and disabled person's organisations... The EU has the duty to ensure that one set of its laws does not damage their other obligations, including the UN Convention on the Rights of Persons with Disabilities, which the EU has ratified, and the European Pillar of Social Rights.'



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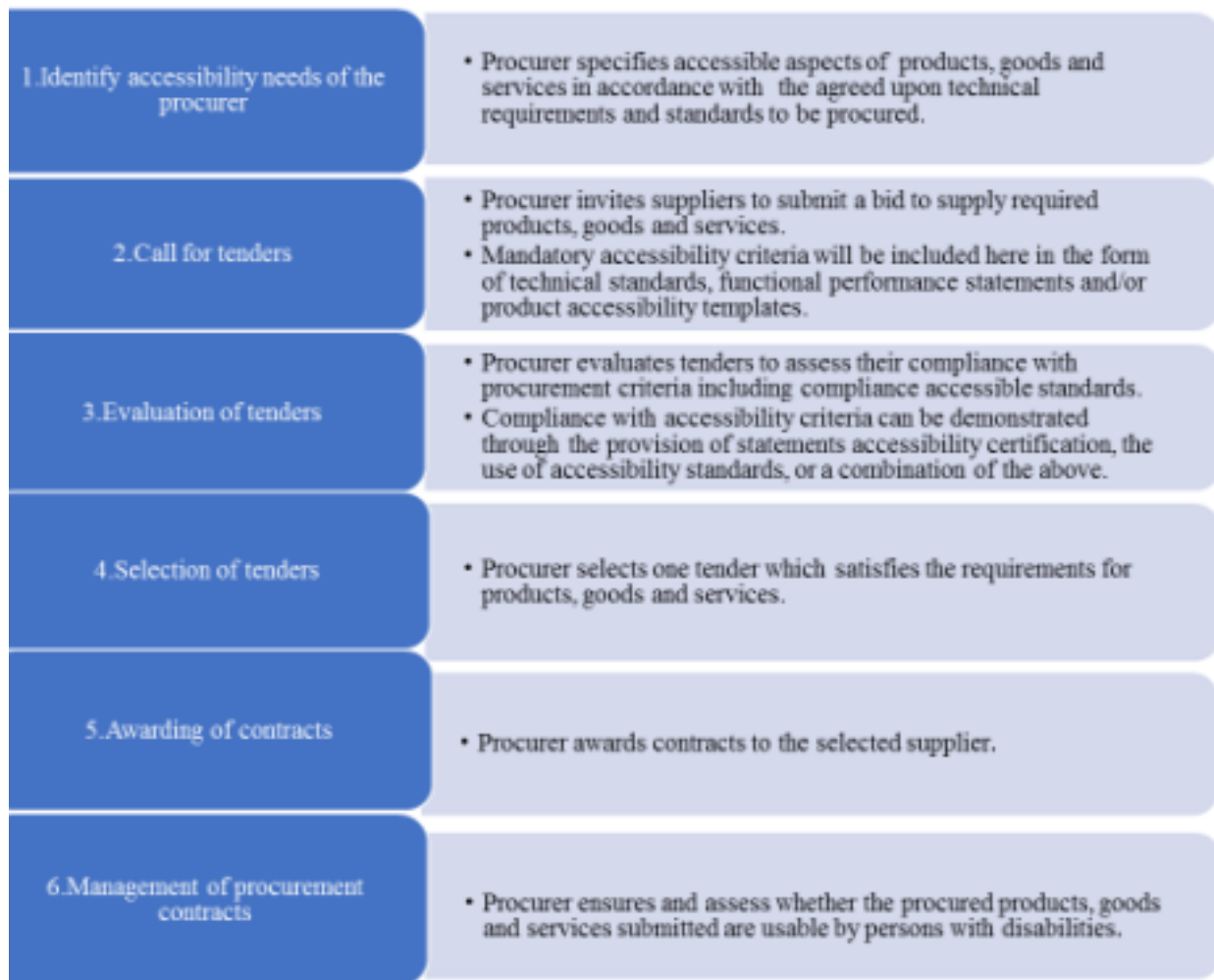
Source UNESCAP and EASPD

A six-step process of ensuring disability inclusion in public procurement is described in the following diagram supplied by UNESCAP.

Strategic public procurement involves steps before and after the actual procurement, including stages where OPDs/DPOs can be involved.



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Underpinning concepts for disability inclusive public procurement

Disability inclusive general concepts for public procurement are derived from the CRPD and inform policy development and programming. They are described in detail in Annex 2. The concepts can be applied separately and in combination to ensure that public procurement is disability inclusive and compliant with EU directives and legislation and the CRPD.

The main concepts are:

- Universal Design, which is a practical expression of the CRPD and General Comment 2 obligations.
- Enacting the obligation to make it a right for persons with disabilities to claim 'reasonable accommodation', that is, adaptations of existing facilities and services to the requirements of users with disabilities. The failure to deliver this provision amounts to discrimination.



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- Programming that takes forward the idea of ‘Seamless connectivity’ - ‘to enable movement between physical and virtual realities without barriers.’ (see UNESCAP’s work on this³⁶).
- Partnerships and action to incentivise suppliers – examples include the commitment to accessibility in Barclays Bank³⁷, the partnerships being developed through the UNDIS between procurers and contractors and the promotion of disability confidence in the business community through the Business Disability International Charter.³⁸
- Preferential Contracting to reward suppliers who demonstrate CRPD compliance through accessible processes for tenders and including accessibility standards in tenders.
- Rewarding disability inclusive suppliers who demonstrate employment of persons with disabilities and have supplies of goods and services provided by persons with disabilities.
- Partnerships and alliances with the procurement community to support it to overcome barriers and be champions of disability inclusive public procurement.

Section 5: Good practices

The following section describes a number of good practices that have been recommended by informants and described in the literature. With the exception of the American Disabilities Act and Section 508 mandate of the USA these practices are a mix of processes and intentions to further disability inclusive practices in procurement. Disability inclusive procurement policies and accessibility standards are required to embed good practice, together with training of procurement staff and monitoring of practice especially by OPDs/DPOs, to ensure that they are being implemented.

- The **Global Action on Disability network (GLAD)**³⁹ is prioritizing collaborative partnerships to mainstream disability inclusion across the UN, international development agencies, NGOs, disability organisations and the private sector. GLAD is a five year old initiative; its work on public procurement is being led by Disability Business International with the intention to ‘engage procurement colleagues within their organisations with a view to establishing a working group on disability-confident procurement to develop and promote guidance on improving considerations of, and demand for,

³⁶ https://www.unescap.org/sites/default/files/PP%202019-01_Disability%20Inclusive%20Procurement_rev.pdf

³⁷ <https://www.barclays.co.uk/accessibility/statement/>

³⁸ <https://www.businessdisabilityinternational.org/the-bdi-charter/>

³⁹ <http://www.internationaldisabilityalliance.org/content/global-action-disability-glad-network>



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disability inclusion in procurement processes⁴⁰. Tools in development include surveys, guidance notes and audits of national policies and review of monitoring standards. GLAD members consider the network to be helpful to pool information, share ideas and resources and to incentivise standard setting.

- The forthcoming **OECD Development Assistance Committee (DAC)** handbook⁴¹ to oversee the implementation of the DAC Disability spend marker is of interest. Following lobbying by the Disability Movement, led by DFID, the DAC have introduced the spend marker on a voluntary basis. Several donors are already using it. The DAC has agreed to produce a Handbook on the implementation of the marker although this has been delayed. The Disability Movement, represented by the International Disability Alliance (IDA), the European Disability Forum (EDF) and the International Disability and Development Consortium (IDDC) has called both for the handbook to be produced and for there to be mandatory reporting against the marker in order ‘to track development finance in support of persons with disabilities’ as a crucial contribution to improving the availability and quality of data collected on disability in relation to Overseas Development Assistance (ODA).⁴²
- The example of ongoing disability inclusion in public policy and procurement in **the United States of America (USA)**. The ‘**Americans with Disabilities Act**’ or **ADA** (<http://www.ada.gov/>), is a civil rights law enacted by the US Congress. ADA prohibits, under specific circumstances, discrimination based on disability. Section 508 of the Rehabilitation Act requires all people to have equal access to goods, services, and communication. ADA has specific provisions covering employment, public entities and transportation, public accommodations and commercial facilities, telecommunications, and miscellaneous provisions including protection of those who exercise their rights under ADA. Section 508 has specific requirements on Information Communication Technology, with six product categories⁴³ for federal government agencies and services. The law requires government agencies to procure, develop, and maintain electronic and information technology to provide the same level of access to everyone, inclusive of persons with disability. These standards are further enforced through US Access Board Standards⁴⁴ which states that ‘Agencies shall ensure that all functionality of ICT is accessible to and usable by individuals with disabilities, either directly

⁴⁰ [file:///C:/Users/ASUS/Downloads/glad_network_meeting_communique_-_ottawa_2019%20\(1\).pdf](file:///C:/Users/ASUS/Downloads/glad_network_meeting_communique_-_ottawa_2019%20(1).pdf)

⁴¹ [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DCD/DAC/STAT/RD\(2019\)1/RD1&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DCD/DAC/STAT/RD(2019)1/RD1&docLanguage=En)

⁴² Call to Action – Implementation of the Disability Inclusion marker

⁴³ Software applications and operating systems; Telecommunications products; Web-based information and applications; Video and [multimedia](#) products; Self-contained, closed products; Desktop and portable computers

⁴⁴ <https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-rule/text-of-the-standards-and-guidelines>



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or by supporting the use of assistive technology and shall comply with E203'. All federal contractors have to pursue the goal of a workforce in which at least 7 percent of workers have disabilities.

The last comprehensive monitoring survey on Section 508 was in 2011. The survey identified lack of resources, general awareness, and training as the three most pressing challenges to implement and comply with Section 508. Nearly 60 percent of the responding agencies' components had not provided any Section 508 training⁴⁵.

- The government of **Australia** has adopted the EU standard within their national law. The 'Accessibility requirements suitable for public procurement of ICT products and services' (also known as the AS EN 301.549:2016) was incorporated as part of the 'Procurement Framework' within the Commonwealth Procurement Rules, which requires all tender responses and contracts for procurement by all non-corporate Commonwealth entities to comply with the standard.
- The **Preferential Procurement Policy Framework of South Africa** awards contracts based on a preferential points system which features disability inclusion as one of the areas that positively impact the company's overall rating vis-à-vis the public sector.
- In **the Philippines**, public institutions and local governments are required to procure at least 10 percent of goods and services from cooperatives and organizations of persons with disabilities, where possible and applicable.
- The **DFID (United Kingdom) strategy on disability**⁴⁶ includes provisions for disability inclusive HR processes and disability inclusive procurement through suppliers. However as yet no specific disability inclusive language is written into tenders for contracts, and there is as yet no enforcement mechanism. As DFID is very devolved in its operations the guidance given to country offices, where the contracts happen, is to include specific language on persons with disabilities and to ensure that business cases and Terms of Reference (ToR) contractors be disability inclusive. More specific guidance notes for country offices are being developed. There is clear intention therefore in the programme, but as yet no clear monitoring programme nor sanctions applied for noncompliance.
- **UNICEF** has been working on disability inclusive procurement for some years. In 2018 an Executive Directive was issued detailing its two pronged approach of accessibility, in relation to programmes and premises. A number of

⁴⁵ See more detail in the report https://www.ada.gov/508/508_Report.htm

⁴⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/760997/Disability-Inclusion-Strategy.pdf



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technical notes and guidance have been developed, including on humanitarian response⁴⁷. Funds for country offices to make them eco-efficient and accessible are raised through a tax on staff travel. Examples of good practice in accessible design, products and training include Ukraine and Costa Rica, where there is a focus on inclusive business processes. Procurement overall is managed by the UNICEF supply division in Copenhagen which is developing detailed supply requirements⁴⁸. Examples include ‘school in a box’, emergency equipment and shelter design as well as an accessible playground in Zaatari camp in Jordan.

- The government of **Canada** promotes inclusion, participation and accessibility in its public expenditure through the work of Public Services and Procurement Canada (PSPC)⁴⁹. The agency oversees accessibility in the workplace, through applying principles of universal design, reasonable accommodation and employment opportunities for persons with disabilities; accessibility on the web; and accessibility in providing services, to accommodate and be accessible to all people who wish to do business with the government’.
- Training for public procurement specialists on accessibility⁵⁰ and examples of how to involve persons with disabilities requiring cognitive accessibility in innovation procurement in **Sweden**⁵¹.
- In 2013 the **Italian Cooperation Agency**, in close collaboration with the representatives of civil society, and following the principles of the CRPD, adopted the “Italian Development Cooperation Disability Action Plan”⁵². The Action Plan has five pillars. Pillar 3 is related to “Accessible and usable environments, goods and services for persons with disabilities”. Guidelines for the accessibility of buildings financed by the Italian Cooperation⁵³ are contained within the actions of pillar 3. The aim is to ensure reference standards for any new construction or renovation project to allow access to all people, including persons with disabilities.

⁴⁷ https://www.unicef.org/disabilities/files/Guidance_on_strengthening_disability_inclusion_in_Humanitarian_Response_Plans_2019.pdf

⁴⁸ https://www.unicef.org/supply/index_82642.html

⁴⁹ <https://www.tpsgc-pwgsc.gc.ca/apropos-about/acc-eng.html>

⁵⁰ Swedish Public Procurement Agency <https://www.upphandlingsmyndigheten.se/hallbarhet/socialt-ansvarsfull-upphandling/Tillganglighet-och-samtliga-anvanda-res-behov/>

⁵¹ Public Procurement Agency in Sweden <https://www.upphandlingsmyndigheten.se/verktyg/trendens/sysselsattningsskrav-dubblar-effekten-av-skattemedlen/upphandlar-for-mer-delaktighet-i-kommunen/>

⁵² https://www.aics.gov.it/wp-content/uploads/2017/02/B_01_Piano_Azione_eng.pdf

⁵³ https://www.aics.gov.it/wp-content/uploads/2017/02/A_03_linee_guida_accessibilita_eng.pdf



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Section 6: Going Forward

A framework for action to make progress on disability inclusive public procurement will include a number of elements as follows:

Identifying knowledge gaps, compiling and sharing good practice:

- There are knowledge gaps on the obligations and policy provisions derived from the CRPD which must be identified and filled in order to guide disability inclusive public procurement. Training must include staff working in procurement as well as those involved in programming and tendering, and within the disability community.
- Compiling and sharing good practice to share how disability inclusion procurement can be progressed can promote concrete action. Examples that can be a stimulus are clear guidance for suppliers in tender documents; disability inclusive markers (precedents are environmental and gender markers); partnerships with procurement staff and suppliers.
- Setting in train a continuing awareness and capacity building across all EU institutions with the full engagement of the disability community in order to build understanding and ensure the practical compliance with EU regulations and the CRPD.
- Putting in place awareness and capacity building at national level in the places and institutions which are or should be responsible for ensuring compliance with guidelines. It is not clear to how much policy officials, procurement officials, the private sector, service providers, civil servants and organisations of persons with disability know about the regulations about disability inclusive procurement or to what extent they are engaged with the issue.

Putting in place disability inclusive procurement policies and monitoring frameworks

- More robust monitoring of the implementation of the CRPD and EU regulations, and clarity about what standards and enforcement mechanisms look like, are needed. The current absence of functioning monitoring frameworks is an obstacle for both procurement staff and suppliers.
- Legislation is needed to provide a legal basis for disability inclusive public procurement as well as enforcement measures. This could form part of the revised EU Disability Strategy 2021-2030.



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- EU Aid (External Action Programme) may consider how staff in EU and Development Agency offices categorise the ‘disability relevance’ of the range of programmes supported. For example, a programme focused on inclusive education and the construction of schools and health centres may have a clear accessibility and universal design component, but a programme on rural development may not be so clear.
- Together with criteria for ‘disability points’ through inclusion of persons with disability in the work force, mechanisms are needed for checking the reach and content of disability inclusive programmes.
- Further work is needed to determine whether and how major NGO Suppliers to the EU and EU Development have incorporated disability inclusive language and practice in their procurement guidelines and monitoring practices with suppliers.

Setting in motion practice changes

- Even though precedents exist for good standard benchmarking for disability inclusion, it is a new field and will require modifications of existing systems to track disability inclusive procurement and supply.
- Procurement departments and officials and contractors will need to work together proactively to come up with processes and monitoring to ensure compliance.
- OPDs/DPOs and their networks could develop the knowledge and skills to monitor compliance with global regional and national standards on disability inclusive public procurement. They have expressed their needs for training and support on the issue. This would ultimately give them greater visibility and profile on issues of disability inclusive public procurement.

Conclusions and recommendations for disability-inclusive public procurement practices

Throughout the consultations for the guidance note, the full engagement of the disability community in design, practice and monitoring has been emphasised. Awareness raising and capacity building of compliance with procurement departments and officials and suppliers will be best done with the participation and user experience of the disability community. It will be also important to reach out to procurement departments and officials specifically to promote disability inclusion, along with suppliers.

The following practical ideas for the EU institutions, the international cooperation agencies of the EU and the disability community are derived from the foregoing



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discussion. What they have in common is commitment on the part of all concerned, political will and dedicated resources. The UNDIS framework can be used as a practical tool to develop policies and standards which will be CRPD compliant on disability inclusive public procurement. One of the biggest obstacles to be overcome will be the weight and inertia of established practices and the perceived complications of changing direction to practices that are disbursing vast sums of money.

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- Put in place the legal basis for disability inclusive public procurement as well as enforcement measures. This could form part of the revised EU Disability Strategy 2021-2030.
- Public procurement standards should contain clearly measurable indicators with more specific criteria for procurement officials and suppliers on inclusion, which may be country and organisation specific.
- The European Commission should ensure that all its suppliers are audited for disability inclusion. Examples of this can be found in Australia and the USA.
- EU institutions should encourage the use of reserved contracts (Article 20) by contracting authorities to boost work and employment opportunities for persons with disabilities. To enable more suppliers to compete, it is also important to divide bigger tenders into small lots.
- If public authorities decide to use public procurement to fund care services (amongst alternatives), then they should be strongly encouraged to use the full flexibility included in the light regime to ensure that care services are person-centred and user-driven, and guarantee decent wages and working conditions for those providing the services.

International Cooperation Agencies

- Put in place overarching policies, standards and monitoring mechanisms on inclusive procurement which is compliant with the CRPD and in line with the UNDIS framework.
- Work in partnership with the disability community and the EU to raise awareness, build capacity, develop criteria and assess for CRPD compliance procurement departments and suppliers at national and regional level.
- Ensure all procurement departments are trained in disability inclusive public procurement.
- Amend vendor registration portals to include specific language and questions on disability inclusion, making clear that these are linked to points given for contracts.



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- Procurement departments and officials and suppliers with good records on disability inclusion and benchmarking to be shared as good examples of best practice, showing what can be achieved.
- Engage in the GLAD network for partnerships and collaboration.

Disability Community

- Take the lead in advising, leading on and delivering training and awareness-raising with procurement agencies and officials, suppliers and programme teams, with relevant support.
- Participate in the formulation of clear guidelines to be followed by procurement departments of the international agencies and the EU and monitor compliance
- Make greater use of the CRPD country reporting procedures to shed light on how disability inclusive procurement is being conducted or otherwise.
- Collaborate with procurement professionals on standards for disability inclusive practices.



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Annex 1: List of informants

- CBM International - Disability Inclusive Development Initiative, UN Representation
- DFID - Department for International Development, Disability Inclusion Team
- European Commission Directorate-General for International Cooperation and Development - Legal Department (DEVCO)
- European Commission Directorate-General Employment, Social Affairs & Inclusion (EMPL)
- European Association of Service Providers for Persons with Disabilities (EASPD)
- European Disability Forum (EDF)
- European External Action Service (EEAS)
- European Union of Deaf
- Inclusive Policy
- International Disability Alliance (IDA)
- International Federation of Hard of Hearing People
- International Labour Organization
- UCL International Disability Research Centre
- United Nations Disability Team - Executive Office of the Secretary-General
- UNICEF Disability Section, cross-cutting cluster Programme Division
- UNICEF Office of Research – Innocenti
- UNICEF Supply Division
- United Nations Partnership on the Rights of Persons with Disabilities (UNPRPD)
- Sightsavers
- Swedish Disability Rights Federation
- Washington Group
- World Blind Union



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Annex 2: Concepts underpinning disability inclusion

1. Universal Design

The seven principles of universal design⁵⁴ were developed in 1997. They underpin the practical expression of the obligations of the CRPD. They are Equitable Use; Flexibility in Use; Simple and Intuitive Use; Perceptive Information; Tolerance for Error; Low Physical Effort; Size and space for approach and use. Procurement practice should be aware of these principles when putting out tenders.

2. Reasonable Accommodation

Alongside the benchmark of universal design is the concept of 'reasonable accommodation', a right recognized by the CRPD. Failure to provide reasonable accommodation constitutes disability-based discrimination; examples of a reasonable accommodation request in the workplace could be that of a deaf employee requesting his or her employer to provide a sign language interpreter to support communication while at work or adaptation of the workplace to accommodate wheelchair users. Reasonable accommodation becomes important when the issue is retro-fitting or adapting existing infrastructure or services to make them disability inclusive, in contrast to constructing or designing an entirely new building or service.

3. Seamless Connectivity

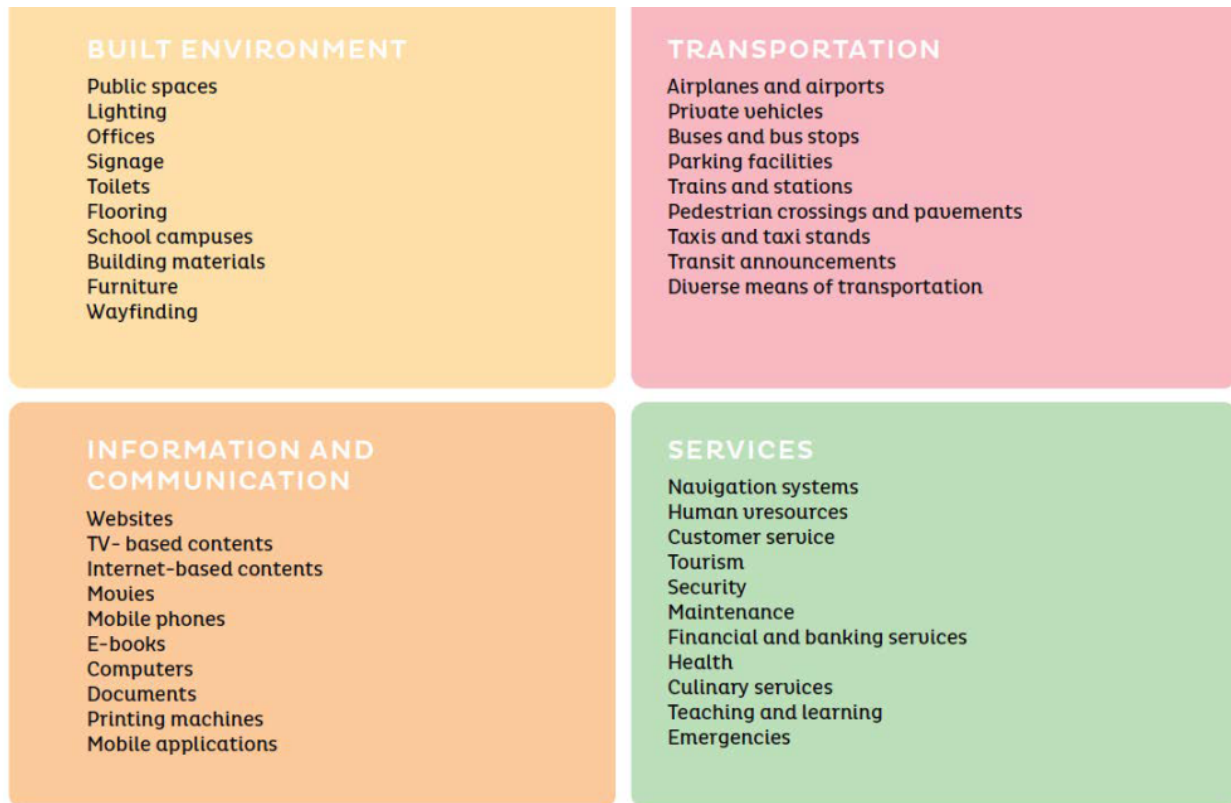
The term 'Seamless connectivity' describes the process by which persons with disabilities can move between environments, both physical and virtual, without barriers. Seamless connectivity can be thought of as the combination of multiple accessible parts fitting into a singular accessible whole; effective and meaningful participation of persons with disabilities as the outcome of successful implementation of accessibility, Universal Design and seamless connectivity, in which participation in all areas of society is on an equal basis with others. The inter-connected dimensions of accessibility, universal design and seamless connectivity are described in a useful diagram below, developed by United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP)⁵⁵.

⁵⁴ <http://universaldesign.ie/What-is-Universal-Design/The-7-Principles/>

⁵⁵ https://www.unescap.org/sites/default/files/PP%202019-01_Disability%20Inclusive%20Procurement_rev.pdf



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Source UNESCAP 2019

4. Strategies for Incentivising Suppliers

Various informants to this report have emphasised the importance of not only sanctioning but incentivising suppliers to help them become more disability aware and therefore inclusive. Precedents exist in the fields of green and gender sensitive suppliers.

Barclays Bank has developed a disability inclusion strategy⁵⁶ which focuses on employment and mental health. The CEO described the rationale for this in these words, ‘Our ambition is to become one of the most accessible and inclusive companies in the world, not only because it makes good commercial sense, but because it’s the right thing to do. We recognise that disabled people and those with mental health conditions are a hugely under-represented pool of talent for employers, as well as being an often overlooked group with substantial spending power – and they are a group whose numbers and complexity will continue to increase as the global population grows and ages’.

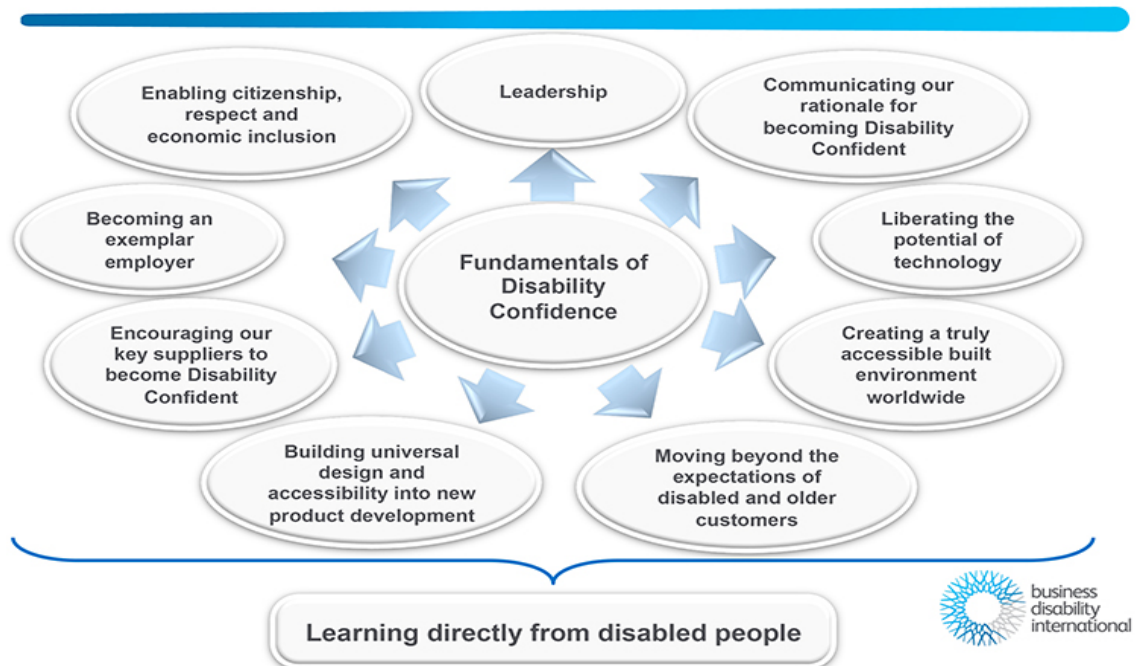
⁵⁶ https://home.barclays/content/dam/home-barclays/documents/who-we-are/our-strategy/DandI/a07544-01%20Barclays%20D&I%20Disability%20Whitepaper%202018%20RGB_acc-FINAL.pdf



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Convincing suppliers they should have disability inclusive policies and markers to enable customer choice is an emerging area for procurement – one being taken forward by Business Disability International, which has developed a Charter to enable businesses to be ‘Disability confident’ in order to ‘help organisations improve their performance for the 1 billion+ people with disabilities worldwide and those who become disabled as they age’⁵⁷.

The bdi Charter



A key principle for this work is engagement with persons with disabilities from the outset. While accessibility and universal design must be criteria, suppliers will need to consider different specifications for different types of disabilities. Disabilities are not all the same, and the disability community must be involved in all stages of the design process.

5. Preferential contracting

Preferential contracting rewards suppliers who can demonstrate compliance with accessibility criteria. UNDIS is developing technical guidance for preferential contracting through indicators along the lines of ‘approaches requirements’; ‘meets requirements’; ‘exceeds requirements’. After the policy framework is in place, ‘progressive realisation’ of policy implementation is accepted as necessary, because change doesn’t happen overnight. It is recommended, however, that procurement departments take steps to prioritise goods and services to be disability inclusive as a key first step, always with the close involvement of persons with disabilities.

⁵⁷ <https://www.businessdisabilityinternational.org/the-bdi-charter/>



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Tools suggested include mapping of procurement institutions, putting in place human resource policies that favour hiring persons with disabilities as a percentage of the workforce and financing and putting in place accessible communications and accessibility features for goods and services. Some informants to this report favour the development of an 'international organisation of standards' informed by what exists already. That said, efforts to increase awareness and capacity of the importance of the issue amongst both procurers and suppliers is fundamental to change. There are assumptions that this is 'too big' and too 'complex'.

Informants have commented on the value of 'empowering' procurement officials, who may be experts in their fields – on health, for example – but not necessarily exposed to issues of disability. These experts can be supported to be champions and be very enthusiastic to take necessary steps to ensure suppliers become disability inclusive.



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