



Integrating Equality & Diversity into Procurement

Guidance for Contractors and Procurement Officers

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Document	Integrating equality and diversity into procurement		
Date Created	April 2010 (author Becky Jones)	Address	Stoke-on-Trent City Council Civic Centre
Version	2		
Status	Revised 30/7/2014		
Version Notes	1		

Overview

This guide for contractors and officers is published for use across the Council in dealing with equality issues in procurement processes.

The guide gives contractors and officers' information and advice on how the Council will promote equality in procuring goods, works, and services from external contractors and suppliers.

Why Equality and Diversity in Procurement?

The Council considers equality and diversity to be an essential cross cutting element in its mission to become one of the top performing Council's in the country, universally recognised for exemplar performance and first class service.

The Council is committed to delivering against the equality and diversity agenda, which it regards as being in the mainstream of the authority's work. An important part of this commitment is encouraging and, where possible, requiring companies and other organisations which bid for Council services to practise equalities in employment and service delivery.

The role of procurement in promoting Equalities and Valuing Diversity

The Council provides a wide range of services to residents and businesses in the City. In some cases these are provided directly by the Council, in others by our contractors and partners.

Each year, the Council enters into contracts worth many millions of pounds for buying goods, works and services on behalf of the people of the City. These people come from all sections of society - men and women, young and old, people with disabilities, gay men, bisexuals and gay women/lesbians, people from all ethnic groups and of all different religions and beliefs - and the services provided to them should be geared to their diverse needs.

Council spending sustains and generates thousands of jobs. The Council has a statutory duty to ensure that public money is spent in a way that ensures Best Value and does not lead to unfair discrimination and social exclusion.

The promotion of equalities in the procurement process will help the Council to:

- Obtain best value for the Council and improve the quality of local authority services
- Ensure that public money is not spent on practices which lead to unfair discrimination
- Create a diverse and integrated workforce
- Deliver more responsive and flexible services in combating social exclusion and building strong and cohesive communities
- Encourage other organisations to practice the Council's public service ethos on Equalities

Mechanisms

The Council has developed a framework to incorporate equality and diversity issues in the contracting process to ensure that:

- Its Single Equality Scheme is reflected in service design, delivery and review
- Community needs are reflected in service design, delivery and review
- Contractors fulfil their own equal opportunities obligations as employers and service providers in respect of equality areas when carrying out work for the Council

Legal Background

Historically, there has been a vast array of equalities legislation containing various prohibitions on discrimination on the grounds of age, disability, gender, race, religion and belief and sexual orientation in the provision of goods, facilities and services:

- The Equal Pay Act 1970
- The Sex Discrimination Act 1975
- The Race Relations Act 1976, 2000
- The Disability Discrimination Act 1995, 2005
- The Employment Equality (Religion/Belief) Regulations 2003
- The Employment Equality (Age) Regulations 2003
- The Employment Equality (Sexual Orientation) Regulations 2003
- The Equality Act 2006
- The Equality Act (Sexual Orientation) Regulations 2007

This legislation has now been superseded by the Equality Act 2010 and this makes it clear that public bodies should use procurement to drive equality and private companies bidding for work with the Council should see out their commitment to the equality and diversity agenda.

The Council expects contractors to comply with all relevant legislation, and incorporates this as a requirement in all its contracts.

What the Council will do in procuring goods, services and works

The Council will take into account in its tender evaluation and contracting processes, a potential contractor's approach to equalities in terms of its employment practices and service delivery. It will do this by asking potential contractors relevant questions and include appropriate provisions in its contract documents relating to these matters. The response to these questions will be evaluated as part of the selection process. The impact of its procurement strategy with regard to the promotion of equalities will also be monitored and managed during the life of each contract.

The Council's contracting officers will follow the checklist in Appendix A & B to ensure that these principles are observed.

What contractors and suppliers can do

Appendix C details the procurement process from a supplier's point of view, taking into account equalities considerations which will be applied by the Council.

Process for checking contractors' compliance

The Council will check a contractor's compliance with equalities issues in two ways:

- **Prior to Contract Award** -by asking the equalities questions listed in the tender document and requiring documentary evidence to support the answers. If the answers and evidence do not, after evaluation, satisfy the Council's criteria, the firm may not be granted entry onto a tender shortlist or awarded a contract.
- **After Contract Award** -by including contract conditions on equality in all Council contracts and by monitoring a contractor's performance and compliance with those conditions.

APPENDIX A

Checklist for planning procurement projects:

When is equality a core requirement in a contract?

The following five questions will help determine whether equality is a core requirement in any contract for goods, works, or services.

1. What is to be provided under the contract?
2. Is the purpose of the contract to provide services directly to the public?
3. Is the provision of goods, works, or services in question likely to affect, directly or indirectly, your ability to meet the duty to promote equality?
4. If the answer to either 2 or 3 is yes, is it necessary to include requirements for promoting equality in the contract, to make sure we meet the duty?
5. If the answer to 4 is yes, what equality requirements are appropriate for the contract in question? (To establish this response, an Equality Impact Assessment will need to be carried out. This will be provided to you and will need to be returned to the Council).

While equality is more likely to be relevant to contracts for services, we should not assume that it will not be relevant to contracts for goods or works.

Contracts for Services

Equality is a core requirement when it is an essential part of the contract and relevant to your duty to promote when:

1. It involves direct contact with the public, as in parking control, revenue collection or the protection of property, council tax or debts, or security services.
2. A service combines technical performance with direct provision to the public, as in transport services.
3. Services involve the repair, maintenance, or cleaning of premises, equipment, or plant that the Council owns or controls, where the service requires awareness of different languages, religious factors, or accessibility of services to disabled people.
4. Services, such as employee canteen and training which are provided for the benefit of Council employees.
5. Employees transferred to a contractor under TUPE (Transfer of Undertakings Protection of Employment Regulations 1981).

In these instances, an Equality Impact Assessment should be carried out and provided to the Council.

Contracts for goods

1. Our primary concern is likely to be that the goods are 'fit for purpose' and that they meet quality standards.

2. In certain contracts, to be fit for purpose, it will be a core requirement that the goods should be capable of meeting the needs of particular groups e.g. people with a disability.
3. We shall not provide goods on less favourable terms, e.g. to people with a disability.

Contracts for works

1. You should be asking the five questions listed on page 5.
2. In contracts for works, the conduct of a contractor's employees towards Council employees and towards members of the public is relevant to the duty.
3. Works must comply with the Disability Discrimination Act ((1995) and as amended (2005)) on ensuring access for disabled people.

APPENDIX B

Checklist for the Council’s Contracting Officers

Steps to take in all contracts

Determine who will be responsible for evaluating equality elements at each stage.

Provide necessary training on equalities legislation for all relevant employees.

Additional steps to take when equality is a core requirement

PLANNING

Determine whether equality is a core requirement of the proposed contract.

Ensure employees responsible for drawing up specifications and contract conditions understand the requirements of equalities legislation.

Review the equality impact of the Council’s current arrangements.

Consult internally and externally on how better to meet the duty to promote equality.

DRAFTING SPECIFICATIONS

Include equality requirements in the specification.

DRAFTING CONTRACT CONDITIONS

Include non-discrimination contract clauses.

Where relevant, include additional contract clauses on equality in employment and service delivery.

SELECTING TENDERERS

Ask about findings of discrimination in employment and service delivery and any action taken as a result in the pre-qualification questionnaire.

Where relevant, ask questions about equalities policy, training and compliance with the equalities legislation.

INVITATION TO TENDER

Refer to the relevant statutory duties in Equalities Legislation and state equality evaluation criteria in the invitation to tender.

EVALUATING TENDERS

Check tenderers’ acceptance of equalities contract conditions.

Evaluate tenderers’ proposals for meeting equality requirements in the specification.

MANAGING AND MONITORING CONTRACTS

Meet the successful contractor to ensure full understanding of non-discrimination conditions and agree reporting arrangements.

Consider a voluntary agreement with the contractor for additional equality measures.

Monitor the contractor's performance of equality contract conditions.

Where equalities performance is inadequate, invoke default provisions or warn the contractor that they may not be considered for future contracts.

Additional steps to take when equality is a core requirement

Meet the successful contractor to ensure full understanding of the Council's equalities duties and equalities requirements in contract specifications and to agree contract management and monitoring.

Monitor the contractor's performance of equalities requirements in the specification e.g. DDA accessibility.

APPENDIX C

The Procurement Process for Contractors

ADVERTISEMENT

- Check whether equality is a core requirement
- Make sure you understand in broad terms what this means for you
- Check your equalities policy is up-to-date and covers employment and service delivery issues
- Check your equalities policy is compatible with the Council



SELECTION

- You may be asked if you have any history of discrimination: if a finding has been made against you, be honest and provide evidence to show how you have changed
- If you are asked further questions about equalities, provide full answers and supporting evidence

INVITED TO TENDER
YES

NO → **SEEK FEEDBACK ON EQUALITIES ELEMENTS** ←



INVITATION TO TENDER

- Make sure you are aware of the parts of the specification relating to compliance with Equalities Legislation
- Consider what you need to do to meet the requirements (e.g. you may need to train your employees)
- Check that you fully understand the contract conditions and confirm acceptance
- Use all the information provided by the Council (e.g., Equalities Policy and other data)
- Outline how you will fulfil all the elements of the contract



AWARDED CONTRACT
YES

NO →



AFTER YOU HAVE WON A CONTRACT

- Meet the Council to discuss monitoring and managing the contract
- Make sure you understand exactly what is required of you
- Make sure you meet all the requirements of the contract and discuss any difficulties immediately
- Suggest additional voluntary ways of working with the authority

Equal Opportunities Monitoring Form

The Council seeks to ensure that all sections of the community have access to all the services provided by the Council. It is also imperative that businesses from all sections of the community have a fair chance to trade with the Council. The following information will be used for monitoring and statistical purposes only. Any information provided will not be taken into account in evaluating companies for either entry onto an approved list or in the process of contract award.

Please put the relevant percentage next to the option that reflects your company profile.

1. What is the % ethnic origin breakdown of your company? i.e. 80% English, 10% African, 10% Indian

White – British	Asian or Asian British – Bangladeshi
White – Irish	Chinese or Other Ethnic Background
White – Scottish	Romany Gypsy
White – Welsh	Other Asian Background
White – English	
Irish Traveller	Mixed – White and Black African
Other White Background	Mixed – White and Asian
	Other Mixed Background
Black or Black British – Caribbean	Other Ethnic Background
Black or Black British – African	
Other Black Background	Other – please state
Asian or Asian British – Indian	Not known
Asian or Asian British – Pakistani	

2. What is the % gender breakdown of your company?

Male	Female
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3. What is the % age breakdown of your company?

Up to 30	46 – 64
31 – 45	65+

4. Do any of your employees consider themselves to have a disability, as defined by the Disability Discrimination Act?*

Yes – I am a registered disabled person

Yes – I am a non registered disabled person

No – I have no known disability

Explanatory notes

"a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities".

The adverse effect must be substantial, and be a long-term effect. Meaning that it must have lasted or is expected to last for more than 12 months, or for the rest of your life.

What are "normal day-to-day activities"?

At least one of these areas must be badly affected:

- Mobility
- Manual dexterity
- Physical co-ordination
- Continence
- Ability to lift, carry or move everyday objects
- Speech, hearing or eyesight
- Memory or ability to concentrate, learn or understand
- Understanding of the risk of physical danger