

*London Borough of Richmond upon
Thames*

**A GUIDE TO INTEGRATING
EQUALITY AND DIVERSITY INTO
PROCUREMENT**

For

**CONTRACTORS AND PROJECT
OFFICERS**

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OVERVIEW

This guide for contractors and officers is published to clarify the way in which equality issues are managed in relation to the procurement process. The guide provides contractors and officers with information and advice on how the Council will promote equalities and diversity in procuring goods, works, and services from external contractors and suppliers. It helps external organisations to become familiar with what is expected of them in the tendering process and how they can best prepare.

The guidance is intended to convey key points in a simple, transparent and focussed document and is not intended to cover all relevant issues comprehensively.

WHY EQUALITY AND DIVERSITY IN PROCUREMENT?

The Council considers equalities and diversity to be essential elements of a modern, effective and ethical organisation, which is reflected in its Equality and Diversity Policy statement.

An important part of its commitment to equality and diversity is encouraging and where appropriate requiring, companies and other organisations that bid for Council services to undertake effective equalities and diversity practices in service delivery and, where relevant, in the management of their own staff.

The role of procurement in promoting Equalities and Valuing Diversity

The Council provides a wide range of services to residents and businesses in the Borough. 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 its residents and customers. These people come from all sections of society - men and women, young and old, people with disabilities, people of differing sexual orientation, those who may be socially disadvantaged and people from all ethnic and faith groups - and the services provided to them need to be geared to their diverse needs.

Similarly, these same groups of people may wish to become service providers to the Council, often as small businesses. Their diverse needs should be considered in planning and administering the procurement process.

The Council has a statutory duty to ensure that public money is spent in a way that ensures best value, which includes addressing issues of 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
- deliver more responsive and flexible services in combating social exclusion and build strong and cohesive communities
- deliver its equalities objectives through its private and voluntary sector partners
- foster a workforce with an enhanced understanding of equalities and diversity

Approach to Procurement Framework

This guidance sets out a framework for incorporating equality and diversity issues in the contracting process, which:

- recognises the importance of proportionality in the management of the procurement process
- can be used to inform decisions as to specification content, tender route, tender evaluation and contract management

LEGAL BACKGROUND

The Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000 (RRA), the Sex Discrimination Act 1975 (SDA), the Equal Pay Act 1970 as amended (EPA) and the Disability Discrimination Act 1995 (DDA) contain various prohibitions on discrimination on the grounds of race, sex and disability in the provision of goods, facilities and services. The Council expects contractors to comply with all relevant legislation, and incorporates this as a requirement in all its contracts.¹

The focus of this Guidance is on equality and the statutory duty the Council has now under the amended RRA, the DDA and the SDA. Moreover, the Council takes a generic approach to equalities and every effort should be made to ensure equal treatment in other respects as well, such as sexual orientation, age, religion and social disadvantage.

The Race Relations Act 1976

The Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 imposes a positive statutory duty on local authorities, in carrying out their various functions, to have due regard to the need to:

- eliminate unlawful racial discrimination

¹ The following legislation and any regulations made under any of these Acts refer to collectively as equalities legislation: The Race Relations Act 1976 as amended, The Disability Discrimination Act 1995, the Sex Discrimination Act 1975, and the Equal Pay Act 1970 as amended.

- promote equality of opportunity
- promote good relations between people from different racial groups

The amended Race Relations Act now outlaws discrimination in all Council functions, including procurement.

The Disability Discrimination Act 1995

Anyone who provides goods and/or services is covered by the Disability Discrimination Act and is required to comply with its provisions. From 1st October 2004 the exemption for employers with less than 15 employees has been removed.

Since 2nd December 1996 the Act has outlawed any less favourable treatment for a reason related to a person's disability that cannot be justified. This is defined as:

- By refusing to provide, or deliberately failing to provide any service which it provides or is prepared to provide to the public
- In the standards of service or manner in which it provides the service
- The terms on which it provides the service
- In terms of employment, access to employment, promotion or any employee benefit

From 1st October 1999, under part III of the Act, all service providers have had to make reasonable adjustments to enable disabled people to access goods and services. Part III also provided that from 1st October 2004 any physical feature which made it difficult or impossible for disabled people to use services should be altered, avoided or measures taken to deliver the service in an alternative way.

The Disability Discrimination Bill, when it becomes law, will have significant added power when combined with the 'social considerations' provisions of the new public Sector Procurement Directive. The Bill introduces a new, positive duty on the public sector to eliminate discrimination against, and harassment of, disabled people, and to promote equality of opportunity for disabled people.

The Sex Discrimination Act 1975 and the Equal Pay Act 1970

This legislation outlaws discrimination on grounds of gender, but do not as yet confer statutory duties on local authorities to promote gender equality. Nevertheless, it is consistent with the Council's Equalities and Diversity Policy to promote gender equality in the Council's procurement processes.

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 relevant to its service delivery. Specifically, evaluation and contracting processes will be designed within the context of each project taking into account the relevance and proportionality of specific issues.

Officers will do this by asking questions of potential contractors relevant to the contract during the evaluation/shortlisting stages of a tender exercise. It may also include appropriate specific provisions in its contract documentation relating to the way in which a contract is to be managed. Contracts will be monitored to ensure that contract commitments in relation to equalities are met. Appendix A provides a checklist for Council officers when planning the procurement of a contract.

Council officers will decide how contracts are to be specified, tendered and evaluated by applying the tests of 'relevance' and 'proportionality', to see where, when, and how promoting race equality is relevant to the contract. In other words, they will have to consider whether race equality is a core requirement and if so how that will be reflected in the contract specification and tender process. This process may also need to strike a balance with other key contract objectives.

Generally, it will be services rather than goods or works that will be the most relevant area to consider. Services that interface directly with the public are likely to be particularly important. However, the provision of other services or products can also be relevant. For example, property services in relation to design for people with disabilities or for minority ethnic groups. Similarly, direct contact with the public requiring an awareness of different languages, religions or cultural norms, or issues of accessibility for disabled people may all indicate that equality is a core requirement under the contract being considered. Internal provision of services to staff may also be a factor. For example, human resource services.

When is equality a core requirement in a contract?

The following five questions (based on CRE Guidance) 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?

PROCESS FOR CHECKING CONTRACTORS' COMPLIANCE

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

- **Prior to Contract Award** - by asking the equalities questions listed in Appendix C, which may form part of a Pre-qualification Questionnaire (PQQ - shortlisting

process) or as part of the tender documents. Section A of Appendix C refers to the PQQ and Section B gives examples of supplementary questions that may be asked.

Documentary evidence will be required to support the answers. If the answers and evidence do not, after evaluation, satisfy the Council's criteria, the contractor may not be granted entry onto a tender shortlist or awarded a contract.

- **After Contract Award** - by including contract obligations on equality in all Council contracts and/or specifications and by monitoring a contractor's performance and compliance with those requirements.

What Contractors and Suppliers Can Do To Prepare

Appendix B details the procurement process from a supplier's point of view, taking into account equalities questions and obligations which may be applied by the Council.

FURTHER INFORMATION AND USEFUL ADDRESSES

The following organisations/people can be contacted for information and advice on equal opportunities and race equality in employment:

The Commission for Racial Equality (the CRE)

St Dunstan House
201-211 Borough High Street
London SE1 1GZ
Tel: 020 7939 0000 (Private sector)
www.cre.gov.uk

The Disability Rights Commission (the DRC)

Fox Court
14 Gray's Inn Road
London WC1X 8HN
Tel: 0845 762 2633
www.drc-gb.org

The Equal Opportunities Commission (the EOC)

36 Broadway
London SW1H 0BH
Tel: 0845 601 5901
Email: info@eoc.org.uk

The Low Pay Commission

Ground Floor, 1 Victoria Street
London SW1H 0ET
General enquires: 020 7215 5773
E-mail: lpc@lowpay.gov.uk

The Corporate Procurement Unit

Civic Centre

Twickenham TW1 3BZ

General enquires: 020 8891 7192 / 7194 / 7195

E-mail: procurement@richmond.gov.uk

Equalities and Diversity Manager

Ms Suganya Ranganathan

Civic Centre

Twickenham TW1 3BZ

General enquires: 020 8891 7829

E-mail: s.ranganathan@richmond.gov.uk

Way To Work (Support to recruit apprentices)

Web site: www.waytowork.org.uk

REPB (Work experience and supporting schools)

Web site: www.repb.co.uk

CHECKLIST FOR THE COUNCIL'S CONTRACTING OFFICERS

STEPS TO TAKE IN ALL CONTRACTS	ADDITIONAL STEPS TO TAKE WHEN EQUALITY IS A CORE REQUIREMENT
<p>Determine who will be responsible for evaluating equality elements at each stage.</p>	
<p>Provide necessary training on equalities legislation for all relevant staff.</p>	
<p>PLANNING</p>	
<p>Determine whether equality is a core requirement of the proposed contract</p>	<p>Review the equality impact of the Council's current arrangements</p>
<p>Ensure staff responsible for drawing up specifications and contract conditions understand the requirements of equalities legislation.</p>	<p>Consult internally and externally on how better to meet the duty to promote equality</p>
<p>DRAFTING SPECIFICATIONS</p>	
	<p>Include equality requirements in the specification</p>
<p>DRAFTING CONTRACT CONDITIONS</p>	
<p>Include appropriate non-discrimination contract clauses. A range of model clauses in relation to race equality can be viewed in the CRE document 'Race Equality and Procurement in Local Government'. The extent to which they are adopted should be related to the type of contract and they should in any case be adapted to cover other forms of non-discrimination.</p>	<p>Where relevant, include additional contract clauses on equality in employment and service delivery.</p>

SELECTING TENDERERS (Restricted Tender Route)

When using the 'restricted' tendering route i.e. making a shortlist prior to tendering, it will usually be necessary to establish the existence of a diversity / equal opportunities policy (ask to see the policy)

Also ask about findings of discrimination in employment and service delivery and any action taken as a result of such findings

These key questions form part of the Council's standard pre-qualification questionnaire (PQQ)

Note: a full evaluation of the merits of a tenderer's policy in this area should be left until final tenders are submitted and evaluated

Identify equality requirements as a criteria for tender evaluation in the OJEU (Official Journal of the European Union) notice

EVALUATING TENDERS

Evaluate tenderers' proposals for meeting equality requirements in the specification and contract conditions

MANAGING AND MONITORING CONTRACTS

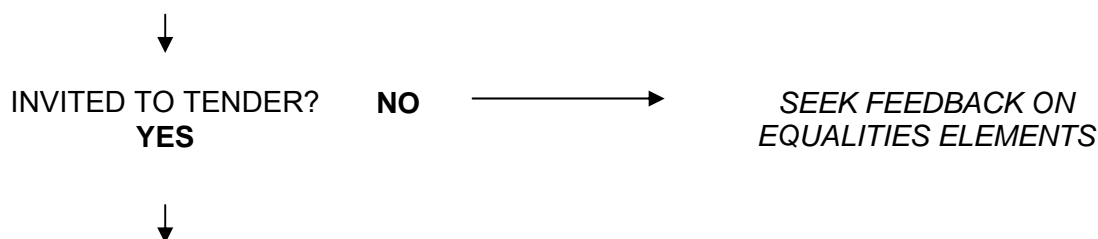
Discuss equalities and diversity obligations and agree performance reporting as part of standard contract monitoring arrangements

Meet the successful contractor to ensure they have a full understanding of the Council's equalities duties and their requirements in contract documents and regularly monitor performance

THE PROCUREMENT PROCESS FOR CONTRACTORS

SHORTLISTING PROCESS (if applicable)

- Check your equalities policy is up to date and relevant to the Council's needs
- 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 equality, provide full answers and supporting evidence



INVITATION TO TENDER

- Make sure you are aware of the parts of the contract conditions and specification relating to compliance with equalities legislation and other specific requirements
- Consider what you need to do to meet the requirements (e.g. you may need to train your staff)
- Ensure you cover relevant equalities issues in method statements where these are sort



AFTER YOU HAVE WON A CONTRACT

- Your equalities obligations under the contract will be monitored by the Council
- In the spirit of partnership working, organisations are encouraged to suggest additional voluntary ways of working with the Council in respect of promoting the equalities agenda

Equalities Questionnaire

Section A – Compulsory Questions

Section A of this Questionnaire must be completed satisfactorily in order for any company to be considered when tendering for any Council contract. The “Equalities Legislation” consists of the Race Relations Act 1976, the Sex Discrimination Act 1975, the Equal Pay Act 1970, and the Disability Discrimination Act 1995, all amendments to these Acts and all relevant regulations made under them.

1. Is your policy on equalities set out:

a) In instructions issued to those concerned with recruitment, selection, remuneration, training and promotion?

YES NO

b) In documents available and communicated to employees, recognised trade unions or other representative groups of employees?

YES NO

c) In recruitment advertisements or other literature?

YES NO

d) In materials promoting your services

YES NO

Please supply with this questionnaire relevant examples of the instructions, documents, recruitment advertisements or other literature and promotional materials.

Enclosed

If you answered NO to either 1a, b, c or d, can you provide (and if so, please do) other evidence to show how you promote equalities in employment and service delivery.

Enclosed

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2. In the last three years, has any finding of unlawful discrimination been made against your firm by the Employment Tribunal, the Employment Appeal Tribunal or any other court or in comparable proceedings in any other jurisdiction?

YES NO

3. In the last three years, has your firm been the subject of formal investigation by the Commission for Racial Equality, the Disability Rights Commission, The Equal Opportunities Commission or a comparable body, on grounds of alleged unlawful discrimination?

YES NO

4. If the answer to question 2 is YES, or, in relation to question 3, a finding adverse to your organisation has been made, what steps have you taken as a result of that finding? Please summarize the details below and provide full details as an attachment:

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Section B – Additional Equalities Questions

The questions in this section should be included in tender documents where they are relevant to the contract.

5. Are your staff with managerial responsibilities required to receive training on equal opportunities?

YES NO

If you have answered YES to question 5, please provide the details of such training

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6. Do you have procedures in place to protect your employees from unlawful discrimination by other employees or by members of the public?

YES NO

If you have answered YES to question 6, support your answer by describing the procedures. List any attached documents.

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7. If you are not currently subject to UK employment law, please supply details of your experience in complying with equivalent legislation that is designed to eliminate discrimination (especially racial discrimination) and to promote equality of opportunity. List any attached documents.

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For Firms who Sub-Contract

8. Do you require sub-contractors to demonstrate evidence of their equalities policies and practices? YES NO

If you have answered YES to 8, provide details of what kind of evidence sub-contractors are asked to submit. What do you ask sub-contractors to provide in evidence of their answers? List any attached documents.

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Other Information

9. Do you have any other details about your equalities policy and practices that you wish to be considered, including information on work you have done in previous or existing contracts, and references, which cover equalities? List any attached documents.

GUIDANCE IN ANSWERING EQUALITY QUESTIONS
(Section A –Compulsory Questions)

An Equal Opportunities Questionnaire has been produced. When completing the questionnaire, all companies must answer each question fully and supply any documentary evidence requested. Failure to fully answer each question or failure to submit any documentary evidence required, may lead the Council to consider the answer unsatisfactory.

Question 1

The sort of documentary evidence that the Council requires is as follows;

- (a) Instructions to those concerned with recruitment, training and promotion.

As evidence of your answer, the Council requires sight of examples of any documents, which explain your firm's policies in respect of recruitment, training and promotion as issued to and used by managers, supervisors, personnel officers, etc.

If you are a large firm, you are likely to have detailed procedures for recruiting staff, which may be included in a Code of Practice. Evidence of monitoring is desirable.

Smaller firms may not have such detailed procedures but are still expected to ensure that personnel operate in accordance with a written equalities policy that includes:

- open recruitment practices such as using job centres and local newspapers to advertise vacancies
- instructions about how the firm ensures that all job applicants are treated equally

There is no prescribed evidence here. The Council requires whatever documents your firm uses for these purposes.

- (b) Documents available to employees, recognised trade unions or other representative groups of employees

The Council requires any document that is issued or available to employees which describes your firm's policy on equalities. You may have a separate race relations policy or include race relations within a broader equalities policy. Either is acceptable. You may put a copy of your firm's policy on all your notice boards or issue individual employees with a copy.

Whichever method you choose, the Council requires a copy of the policy and also to be told how this policy is communicated to your employees. It is also very important that you inform the Council of the name and job title of the senior person in your firm responsible for the development and implementation of your equalities policy.

(c) In recruitment advertisements or other literature.

This relates to how you communicate your equalities policy to the population from which you recruit your workforce. The Council requires sight of documentary evidence that makes public your commitment to equality in employment and service delivery.

(d) In materials promoting your service

This relates to how you provide information in materials promoting your services, e.g. in different languages, making information accessible to people with hearing and visual impairment and physical access for disabled users.

It is essential that you include all the required documentation when you return the completed questionnaire to the Council. Failure to do so will result in delay in the processing of your application and may result in your firm being excluded from a tender list.

Question 2

This question concerns whether any court or industrial tribunal has found your firm guilty of unlawful discrimination in the last three years. The Council may wish to check your answers against records held by the County Courts and the Central Office for Industrial Tribunals.

Question 3

The question asks whether any investigation has been carried out, whatever the outcome. The Council can check a firm's answer from lists that the CRE and the EOC produce. The Council is aware that because a firm has been investigated does not mean that it is guilty of discrimination. The result of the investigation will be taken into account when assessing your answers to the questionnaire.

Question 4

If your firm has been found guilty of unlawful discrimination, the Council would expect to see that your firm has taken steps to correct the situation. The Court, Industrial Tribunals or CRE will have made recommendations about steps your firm should take to eliminate the discrimination. If you have taken no action, or inadequate action, in this respect your firm may be refused entry onto the tender list.

Monitoring Sheet ²

We seek to ensure that all sections of the community have access to our services. We also wish businesses from all sections of the community to have fair chance to trade with us. 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.

How would you classify the overall majority ownership or control of your firm/ organisation (please tick appropriate box or in the case of the number of Directors with a disability, please provide a value).

- Male Female
- Number of Directors with a Disability

Ethnic origin

White

- British
- Irish
- Any other White background (please write in)-----

Mixed

- White and Black Caribbean
- White and African
- White and Asian
- Any other mixed background (please write in)-----

Asian or Asian British

- Indian
- Pakistani
- Bangladeshi
- Any other Asian background (please write in -----

Black and Black British

- African
- Caribbean
- Any other Black background (please write in)-----

Chinese or other ethnic group

- Chinese Any other (please write in)-----

² The Commission for Racial Equality defines an Ethnic Minority as anyone who defines themselves as being in any census 2001 categories other than “White British”. An Ethnic Minority Business is defined as “a business at least 51% owned, controlled and operated by members of one or more Ethnic Minority Group”.