

Integrating equality and diversity into procurement

Guidance for Contractors and Suppliers

**Produced by Bolton Metropolitan Borough
Council**



Overview

This guide for potential contractors and suppliers has been published to help understand how the authority is dealing with the integration of equality into procurement. This guide gives information and advice on how the authority will promote equality in the procurement of goods, works and services.

Why include equality and diversity in procurement?

Bolton Council wants to make Bolton a cohesive, multi-cultural society in which all differences are valued and celebrated. To achieve this we have committed ourselves to the principles of fairness and valuing diversity for everyone who lives, works, studies, invests or visits Bolton. We have produced a Comprehensive Equality Policy which sets out the details of this commitment.

The role of procurement in promoting equality

The Council provides a wide range of services to the community and businesses in the Borough. In some cases these are provided directly by the Council, in other cases on our behalf by 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 Bolton community. Therefore, the services provided to the community should be geared towards their diverse needs and requirements.

Spending by the Council sustains and maintains a significant number of jobs within the Borough. The Council has a statutory duty to ensure that public money is spent in a way that ensures value for money and does not lead to unfair discrimination and social exclusion.

The promotion of equality in procurement will help the Council to:

- Improve the overall value for money for the Council in terms of the goods, works and services they purchase
- Improve the quality, responsiveness and appropriateness of our services.
- Ensure that public money is not spent on practices which lead to unfair discrimination to sections of the Borough.
- Create a diverse and integrated workforce.
- Deliver more responsive and flexible services in combating social exclusion and building stronger and cohesive communities.
- Encourage other organisations to promote and practice the Council's policies on equality.

Bolton MBC's Statutory Duties and Legislation

The Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, the Sex Discrimination Act 1975, the Equal Pay Act 1970, and the Disability Discrimination Act 1995 contain various prohibitions on discrimination on the grounds of race, sex and disability in the provision of goods, facilities and services.

The Council takes a generic approach to equality and we are making every effort to ensure equal treatment in all respects, such as sexual orientation, age, religion and caring status, and not just those covered by legislation.

The Race Relations Act 1976

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

- Eliminate unlawful racial discrimination
- 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

Since 2nd December 1996 the Disability Discrimination 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 of which it provides the service.
- In terms of employment, access to employment, promotion or any employee benefit.

From 1st October 1999, all service providers have had to make reasonable adjustments to enable disabled people to access goods and services. From 1st October 2004, this was extended to include any physical feature which made it difficult or impossible for disabled people to use a service should be altered, avoided or measures taken to deliver the service in an alternative way.

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The Disability Discrimination Bill, when it becomes law in 2006, 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 has yet confer statutory duties on the Council to promote gender equality; though this is expected to change in the future.

The procurement and equality framework

The Council needs to ensure that procurement and equality are appropriately integrated to ensure compliance with its statutory obligations and to promote its vision of valuing diversity throughout its partnership and contractual working.

This is to ensure that:

- Our vision for equality and diversity, as outlined in the Comprehensive Equality Policy, is reflected in service design, delivery and review.
- The Comprehensive Equality Policy is reflected appropriately in the process and procedures associated with tendering and procurement generally.
- Community needs are reflected in service design, delivery and review.
- Contractors fulfil their own equal opportunity obligations as employers and service providers in respect of equality areas when carrying out work for the Council.

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 equality 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 the contractor's procurement strategy with regard to the promotion of equality will also be monitored and managed during the life of each contract, where equality is deemed to be a core requirement.

Process for checking contractors' compliance

A basic summary of the procurement and equality process is as follows:

- All contracts will be required to adhere to the standard contractual terms and conditions, which contain a specific clause on equality.
- Bolton MBC will advise contractors whether the contract is deemed to be relevant to equality and what contractors need to complete as a result.
- If equality is deemed not relevant for a particular contract, all contractors will be required to complete Section A of the Equalities Questionnaire and to submit its supporting documentation.
- If equality is deemed to be relevant, contractors will be asked to complete Section A and B of the Equalities Questionnaire and to submit the supporting documentation.
- The contractor will be required to submit and complete particular tasks for each contract review session depending on the assessed relevance of the contract to equality – see page 13.

Equalities questionnaire

Section A – compulsory questions

To be completed by all those contractors invited to tender

Section A of this questionnaire must be completed satisfactorily in order for any company to be considered for any Approved List or to tender for any Council contract. The equality legislation consists of the Race Relations Act 1976, the Sex Discrimination Act 1975, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion/Belief) Regulations 2003, all amendments to these Acts and all relevant regulations made under them.

1. Is it your policy as an employer and as a service provider to comply with your statutory obligations under the equality legislation, which applies to Great Britain, or equivalent legislation in the countries in which your firm employs staff?

Yes

No

2. Accordingly, is it your practice not to discriminate directly or indirectly in breach of equality legislation which applies in Great Britain and legislation in the countries in which your firm employs staff:

- In relation to decisions to recruit, select, remunerate, train, transfer and promote employees?

Yes

No

- In relation to delivering services?

Yes

No

3. Do you have a written equality policy?

Yes

No

4. Does your equality policy cover:

- Recruitment, selection, training, promotion, discipline and dismissal

Yes

No

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- Victimisation, discrimination and harassment making it clear that these are disciplinary offences

Yes No

- Identify the senior position for responsibility for the policy and its effective implementation

Yes No

5. Is your policy on equality set out:

- In documents available and communicated to employees, managers, recognised trade unions or other representative groups?

Yes No

- In recruitment advertisements or other literature?

Yes No

- In materials promoting your services?

Yes No

Please evidence all questions.

If you answered NO to any part of questions 4 or 5 can you provide (and if so, please do) other evidence to show how you promote equalities in employment and service delivery.

6. In the last three years, has any findings 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

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7. In the last three years, has any contract with your organisation been terminated on grounds of your failure to comply with:

- Legislation prohibiting discrimination; or

Yes

No

- Contract conditions relating to equality in the provision of services

Yes

No

8. In the last three years, has your firm been the subject of formal investigations 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

9. If the answer to question 6 and 7 is YES, or, in relation to question 8, a finding adverse to your organisation has been made, what steps have you taken as a result of that finding? Please summarise the details below and provide full details as an attachment.

10. 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 and to promote equality of opportunity. List any attached documents.

Section B – additional equalities questions

To be completed when equality is considered a core requirement

11. Are your staff with managerial responsibilities required to receive equalities training?

Yes

No

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If you have answered YES to question 11, please provide details of such training.

12. Has your equality policy, in written instructions, been provided to managers and supervisors concerned with recruitment, selection, remuneration, training and promotion?

Yes

No

13. 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 13, support your answer by describing the procedures. List any attached documents.

For firms who sub-contract

14. Do you require sub-contractors to demonstrate evidence of their equalities policies and practices?

Yes

No

If you have answered YES to question 14, please 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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15. 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 the equality questionnaire

Section A – compulsory questions

All contractors will be required to complete this section of the Equality Questionnaire, regardless of the contract requirements.

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 and 2

If your firm has implemented an effective equality policy, you will be able to answer yes to these questions. You will be able to confirm your answers by submitting your equality policy and supporting evidence as for as part of this section.

If your firm does not have equality documentation but wish to tender, documentation on templates is available for all contractors to access. You will need to contact the Procurement Officer who has placed the contract out to tender.

Question 3 and 4

You will need to submit a copy of your firm's equality policy.

You will need to ensure that your policy covers:

- Recruitment, selection, training, promotion, discipline and dismissal
- Victimisation, discrimination and harassment
- Identifies the senior position responsibly for the policy

Question 5

Documents available and method of communication to staff

You will be required to submit examples of any documents, which explain your firm's policies in respect of recruitment, selection, remuneration, training and promotion outside of the equality policy asked for in Question 3 and 4. You will also need evidence of how your firm has communicated this document to staff i.e. notice boards or issue individual employees with a copy.

There is no prescribed evidence here. You will need to submit whatever documents your firm uses for these purposes.

In recruitment advertisements or other literature.

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You will need to submit evidence that makes public your firm's commitment to equality in employment and service delivery.

Small firms may not have detailed procedures but you must ensure that evidence is provided which demonstrates that personnel operate in accordance with a written equality 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 fairly.

In material promoting your services

This relates to how your firm provides 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 your firm include all the required documentation when they return the completed questionnaire.

Question 6

This question's concern is whether any court or industrial tribunal has found your firm guilty of unlawful discrimination in the last three years. It is important to be honest with your answers. The Council may check your responses.

If the answer is yes, you may wish to insert additional information which details the actions your firm has undertaken to prevent a repeat occurrence. Answering yes will not automatically mean that you do not get the contract; you need to ensure that the Council feels confident that you have sufficient measures put in place to prevent a re-occurrence.

Question 7

This question's concern is whether your firm has ever had a contract terminated for non-compliance with equality legislation or equality contract conditions.

If the answer is yes, your firm may wish to submit additional information will details the actions they have taken to prevent a repeat occurrence.

Question 8

This question asks whether your firm has had any investigation carried out, whatever the outcome. The Council can check a contractor's answer from lists that the CRE and EOC produce, so please be honest. 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 firm's answers to the questionnaire.

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Question 9

If your firm has been found guilty of unlawful discrimination, you will need to provide evidence that details the steps your firm has taken to correct the situation. The Court, Industrial Tribunal or CRE will have made recommendations about steps your firm should take to eliminate the discrimination. If no action or inadequate action has been taken in this respect, only then will your firm be considered refusal onto the tender list.

Question 10

If your firm is not subject to UK employment law you must ensure that you supply details of equivalent legislation that you adhere to.

Section B

Question 11

You will need to provide evidence that details the equality training managers have received in your firm. You may wish to submit the training pack or presentation. You may also wish to submit evidence of who attended and when.

Question 12

As evidence you will be required to supply examples of any documents, which explain your firm's policies in respect of recruitment, selection, remuneration, 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, which you should submit as evidence.

If you are a smaller firm, you may not have such detailed procedures but you should still submit documentation that evidences that personnel operate in accordance with a written equality policy.

Question 13

This should be detailed in your firm's equality policy. You should submit copies of any complaints procedures or harassment policies and guidelines that your firm has produced.

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 equality policy is up-to-date and covers employment and service delivery issues
- Check your equality policy is compatible with the Council

Selection

- You will be asked to complete an Equalities Questionnaire.
- If equality is not a core requirement of the contract you will be asked to complete Section A of this questionnaire.
- If equality is a core requirement and relevant to the contract you will be asked to complete Section A and B of this questionnaire.

Invited to tender

Yes

No

Seek feedback on equality elements

Invitation to tender

- Make sure you are aware of the parts of the specification relating to compliance with equality legislation.
- Consider what you need to do to meet the requirements
- Check that you fully understand the contract conditions and confirm acceptance
- Use all the information provided by the Council. The Council's Comprehensive Equality Policy is held on the Bolton MBC website.
- Outline how you will fulfil all the elements of the contract

Awarded Contract

Yes

No

After you have won a contract

- If equality is not deemed to be a core requirement of the contract you will be required to:
 - Adhere to the standard terms and conditions

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- Hold an annual contract review session with Bolton MBC, which will include reviewing your equality policy.
- If equality is a core requirement you will be made aware whether the contract has been deemed of medium or high relevance to equality.

Medium Relevance

- Adhere to the standard terms and conditions
- Hold a six-monthly contract review session with Bolton MBC
- The review will include:
 - Review of your equality policy
 - Submission of details of the number of job applicants and current employees by grade/section against the different equality groups. The minimum is race, gender and disability.

High Relevance

- Adhere to the standard terms and conditions
- Hold a quarterly contract review session with Bolton MBC
- The review will include:
 - Review of your equality policy
 - Submission of details of the number of job applicants and current employees by grade/section against the different equality groups. The minimum is race, gender and disability.
 - Provision of examples that details consultation and information providing on equality issues.
 - Submission of monitoring information against race, disability and gender regarding selection, training, transfer, promotion, discipline and dismissal
 - Evidence that your recruitment advertisements and publicity literature mentions and offers equality of opportunity.

Glossary

core requirement

In the context of an individual contract, a requirement which the public authority has determined the contractors must meet, to provide effectively and efficiently the goods, works, or services that are the subject of the contract.

firm or business

any private or voluntary organisations, such as company, partnership, charitable trust, or other type of body, which can enter into a contract to provide goods, works, or services.

procurement

the process by which a public authority enters into a contract with an external supplier to carry out works or provide goods and services. The term encompasses the full range of public authority contracts, including private finance initiatives (PFI) projects and public private partnerships (PPP). It does not include the decision to 'buy' from an external supplier.

promote equality

to eliminate unlawful discrimination and to promote equality of opportunity and good relations between people from different social groups.

discrimination

direct discrimination means less favourable treatment on equality grounds.

indirect discrimination means applying a requirement or condition which only a considerably smaller proportion of people from one social group can meet.

services

all the activities of a public authority, whether carried out directly or by others on its behalf, excluding activities defined as 'works'. 'Services' includes the exercise of a public authority's powers of regulation, inspection and law enforcement. It includes activities provided to members of the public or a section of the public, as well as services provided to the authority itself.

supplier

a private or voluntary organisation that is interested in providing goods, works, or services to a local authority.

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tenderer

a supplier who has been selected to submit a tender for a contract

value for money

the optimum combination of whole life cost and quality to meet the requirements of the public authority.

works

the construction or demolition of buildings, both residential and non-residential, repair to the fabric of these buildings, construction of roads, bridges, tunnels, and the installation of gas, electric, and plumbing services.

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