

Equality and Diversity Monitoring in Procurement

Guidance for Service Managers and Contractors

March 2010

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If you have any queries in relation to anything contained in this guidance please contact the Procurement Officer on 01424 451504

1. Overview

This guidance note for service managers/officers is for use across the authority in dealing with procurement and equality. This guide gives officers information and advice on how the authority will promote equality in the procurement of goods, works and services from external contractors. This document compliments any existing guidance contained within the Council's Constitution or Financial Operating Procedures .

2. Why include equality and diversity in procurement?

Hastings Borough Council wants to make Hastings and St. Leonard`s 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 the Borough. We have a Comprehensive Equality Policy which sets out the details of this commitment which includes:

- Our principles, values and standards
- Our strategic aims and objectives
- Our structures
- Our goals in employment
- And our undertaking in respect of partners and contractors

For a copy of the policy itself please go to www.hastings.gov.uk/equalities. Please note that this section is due to be updated 2010/2011 in light of the forthcoming Equalities Bill

3. 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 local community it serves. 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 policy on equality.

4. Legal Background

The Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, the Sex Discrimination Act 1975 as amended by the Equality Act 2006, the Equal Pay Act 1970, and the Disability Discrimination Act 2005 contain various prohibitions on discrimination on the grounds of race, sex and disability in the provision of goods, facilities and services. The Equality Act 2006 extended many of these prohibitions to religion and belief and sexual orientation. The Council expects contractors to comply with all relevant legislation, and incorporates this as a requirement in all its contracts.

GUIDANCE

The Council takes a generic approach to equality and every effort should be made to ensure equal treatment in all respects and not just those covered by legislation, for example government guidance such:

Equality Framework for Local Government

The Equality Framework for Local Government is a system adopted by Hastings Borough Council to measure development in policy and practice in equality and diversity. The Equality Framework will:

- Provide a systematic framework for the mainstreaming of diversity
- Help the Council to meet their obligations under the law
- Encourage the development of anti-discrimination practice appropriate to local circumstances.
- Provide a basis for tackling forms of institutionalised discrimination.
- Over time, provide a framework for improving performance.

An important feature of the Equality Framework is to emphasis the importance of diversity practice not just in employment but also as an essential aspect of delivering quality services to the whole community, this includes procurement.

5. The Council's Constitution and Financial Operating Procedures

The Council's rules detailing the procedures to be followed during procurement are contained in Part 9 of the Constitution – Financial Rules (Part 2 of that section 'Contracts Standing Orders') and in Financial Operating Procedures (FOPs).

It is important to ensure that procurement and equality are appropriately integrated to ensure compliance with our statutory obligations and to promote our vision of valuing diversity throughout our 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 fulfill their own equal opportunity obligations as employers and service providers in respect of equality areas when carrying out work for the Council.

This guidance note has been divided into various appendices each detailing how equality is integrated into different aspects of the procurement cycle

Appendix One

Determining whether equality is a core contractual requirement?

One of the first tasks that will have to be undertaken when considering procurement is to determine whether the proposed contract has an impact or relevance to equality. It will be important to ensure you document, briefly, how you have reached your decision on the relevance and impact of the contract to equality.

The following questions, based on the Equality and Human Rights Commission Guidance, will help determine whether equality is a core requirement in any contracts for goods, works, or services.

When looking to place a contract you will be required to identify whether equality is a core requirement, to help you determine whether it is or not you should ask yourself the following questions about the contract:

1. What is to be provided under the contract?
2. Is the purpose of the contract to provide services directly to the public and is it considered relevant to equality?
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. Is the contract value £50,000 or over?

Equality is not a core requirement

If you have answered “no” to question’s two, three and four, equality will not be a core requirement of the contract and will have a **low** relevance to equality issues.

If this is the case, you will be required to:

1. Ensure that the Council’s standard conditions relating to equalities are used. These are available from the Procurement Officer.
2. Ensure that all potential contractors complete Section A of the Equalities Questionnaire (Appendix 2).

Equality is a core requirement

If you answered “yes” to either question two, three or four, equality will be a core requirement of the contract.

If this is the case you will be required to:

1. Ensure that the Council's standard conditions in relation to equalities are used.
2. Ensure that all contractors complete Section A and B of the Equalities Questionnaire (Appendix 2).

Once you have determined that equality is a core contractual requirement you will need to determine how relevant equality is. There are two remaining categories of relevance – **medium** or **high**.

If the contract value is £50,000 or over, the contract must be considered of **high** relevance and all relating **high** relevance requirements must be applied.

Assessing the relevance of a contract

Promoting equality will be more relevant to contracts for some goods, works or services than others. In assessing relevance to equality it is important to look at the totality of what is to be provided, since many technical functions may also involve some interaction with members of the public or Council employees, where equality would be relevant.

Below is a list of considerations for assessing whether equality is of high or medium relevance to a contract. The lists are not exhaustive and it will be in part a judgment by the procuring officer to assess the relevance (medium or high) to equality. However, officers should feel comfortable to approach their Procurement Officer if they have any particular concerns.

Contracts for Services

Equality is relevant to a contract when:

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

6. Dealing with ‘Supported Employees’

Contracts for Goods

1. Our primary concern is likely to be that the goods are ‘fit for purpose’ and that they meet quality standard.
2. In certain contracts, to be fit for purpose, it will be relevant to equality when the goods have to be capable of meeting the needs of particular groups e.g. people with a disability or the need to consider different cultural or religious dress codes or food requirements.
3. Requirements concerning quality, and possibly, arrangements for delivery could also have implications for equality.

Contracts for Works

In any contracts for works, your core requirements are likely to be the completion of the works within specified timescales, at optimum quality standards. However, you still need to consider how relevant the contract is to equality.

1. In contracts for works, the conduct of contractor’s employees towards Council staff and towards members of the public is relevant.
2. Works must comply with the Disability Discrimination Act on ensuring access for disabled people.

Once you have determined the relevance of the contract you will need to make it clear to those who may wish to tender for the contract what will be required of them in terms of equality.

It is important that in your covering statement or letter that accompanies your tender information that you state all documentation requires completion. This statement would extend to include the Equalities Questionnaire (Appendix 2).

Non-completion of paperwork would have to be taken into consideration when reviewing submissions, particularly if equality is of high relevance to the contract. If you are in any doubt about the content contained within the returns you should contact the Procurement Officer.

Appendix Two

Equalities Questionnaire

Section A – Compulsory Questions

*To be completed by **all potential** contractors*

Section A of this questionnaire must be completed satisfactorily in order for any company to be considered for any 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 2005, the Equality Act 2006, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion/Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, all amendments to these Acts and all relevant regulations made under them.

[Please tick appropriate box to answer questions and if you wish to provide additional information please attach supplementary sheets, but keep this to a minimum]

1. Do you have policies in place to ensure that you as an employer and as a service provider comply with your statutory obligations under the equality legislation, which applies to Great Britain, or equivalent legislation in the countries in which you employ staff?

Yes

No

2. Accordingly, do you have policies in place to ensure that you do not discriminate directly or indirectly in breach of equality legislation which applies in Great Britain and legislation in the countries in which you employ 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? If yes please supply.

Yes

No

4. Does your written equality policy cover:

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

Yes

No

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

Yes

No

- The identity of 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

If you answered NO to any part of questions 4 or 5 please provide list evidence to show how you promote equality in employment and service delivery

If you answered YES to any part of questions 4 or 5, please supply evidence that can support your answers below

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

Yes

No

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

- Legislation prohibiting discrimination?

Yes

No

- Contract conditions relating to equality?

Yes

No

8. If the answer to question 6 or 7 is YES please provide details below and specify what steps you or your firm have taken as a result (continue on an additional sheet if required)

9. In the last three years, have you or your firm been the subject of formal investigations by the Equality and Human Rights Commission, (or its predecessors 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

10. If the answer to question 9 is YES please provide details below and specify what steps you or your firm have taken as a result (continue on an additional sheet if required)

11. If you are not currently subject to UK employment law please supply details of how you or your firm comply with equivalent legislation that is designed to eliminate discrimination and to promote equality of opportunity (continue on an additional sheet if required)

Section B – Additional Equalities Questions

To be completed when equality is considered a core requirement or if the contract value is £50,000 or more.

12. Are members of your staff with managerial responsibilities required to receive equalities training?

Yes

No

If you have answered YES to question 12, please provide a list of such training (continue on an additional sheet if required)

13. Do you issue your written equality policy to managers and supervisors concerned with recruitment, selection, remuneration, training and promotion?

Yes

No

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

Yes

No

If you have answered YES please list the procedures below (continue on an additional sheet if required)

For firms who sub-contract

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

Yes

No

If you have answered YES, please provide details of what kind of evidence sub-contractors are required to submit (continue on additional sheet if required)

16. If you have any other information regarding your policies on equality 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 please detail below (continue on additional sheet if required)

Appendix Three

Guidance for Procurement Officers/Service Managers to evaluate the Equalities Questionnaire

What you should look for is evidence that suppliers have taken steps to achieve equality in their employment and service practice to an acceptable standard for the contract relevant to the equality criteria.

For this purpose, the bottom line for all contracts must be that a supplier does not discriminate unlawfully. You should not regard a finding of discrimination as decisive grounds for disqualification, particularly if the supplier provides good evidence that they have taken appropriate steps since then.

You should look for evidence that a supplier is capable of providing the service without discrimination. For contracts where equality is a core requirement, you will also want to know if suppliers are able to promote equality of opportunity.

Section A – Compulsory Questions

Clearly you must ensure that all questions have been answered and that all the documentary evidence requested has been received. If questions have not been answered, you will need to consider whether equality is a core requirement and of significant relevance, and the implications for the contract overall.

If equality is of low relevance you will need to consider the implications within complete tender submission to ascertain whether the tender is sufficient.

If equality is of medium or high relevance, the omission of answers will become more of an important issue. If a contractor has not answered questions it will make it very difficult for you to judge whether their approach to equality is in line with the Council's own ethos and also how it will prevent discrimination and promote equal of opportunity within its own organisation. It is likely that the lack of answers may lead you to consider the tender submission unsatisfactory.

Question 1 and 2

If companies have implemented an effective equality policy, they will be able to answer yes to these questions.

If contractors do not have equality documentation but wish to tender, sample templates are available for all contractors to access.

Question 3 and 4

You will need to ensure that they have stated that their policy covers:

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

Question 5

Documents available and method of communication to staff

You will require details of any documents, which explain the contractor'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 details of how this document has been communicated to staff i.e. notice boards or issue individual employees with a copy.

In recruitment advertisements or other literature

You will need to see details of how the contractors committed to equality in employment and service delivery.

Small firms may not have detailed procedures but you must ensure that the details provided demonstrates that personnel operate in accordance with their 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 a contractor provides information in materials promoting their services e.g. in different languages, making information accessible to people with hearing and visual impairment and physical access for disabled users.

Question 6

This question's concern is whether any court or Employment tribunal has found the contractor guilty of unlawful discrimination in the last three years. You may wish to check a contractor's answer against records held by the County Courts and the Central Office for Employment Tribunals.

If the answer is yes, you may wish to see additional information which details the actions they have taken to prevent a repeat occurrence. Answering yes will not automatically mean they do not get the contract, you must feel confident that measures put in place sufficiently prevent a re-occurrence.

Question 7

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

If the answer is yes, you may wish to see additional information will details the actions they have taken to prevent a repeat occurrence. Answering yes will not automatically mean they do not get the contract, you must feel confident that measures put in place sufficiently prevent a re-occurrence.

Question 8

This questions looks for additional evidence as a result of the answers to question 6 and 7. The answers must be taken into account when assessing your answers to the questionnaire.

Question 9

If the contractor has been found guilty of unlawful discrimination, you would expect to see that the contractor has taken steps to correct the situation. The Court, Employment Tribunal or Commission for Equality and Human Rights (or its predecessors) will have made recommendations about steps the contractor should take to eliminate the discrimination. If no action or inadequate action has been taken in this respect, you should consider refusing entry onto the tender list for this contractor.

Question 10

This questions looks for supporting or additional information with regard to question 9.

Question 11

If the contractor is not subject to UK employment law you must ensure that they supply details of equivalent legislation that they adhere to. You may wish to confer with Legal Services to ensure that the contractor's response is sufficient.

Section B

Question 12

You will need to see details from the contractor of the equality training managers have received.

Question 13

You will require details of any documents, which explain the contractor's policies in respect of recruitment, selection, remuneration, training and

promotion as issued to and used by managers, supervisors and personnel officers.

If it is a large firm, they are likely to have detailed procedures for recruiting staff, which may be included in a Code of practice, which you should be provided with.

Smaller firms may not have such detailed procedures but you should still expect to see and ensure that personnel operate in accordance with a written equality policy.

Question 14

This should be detailed in the contractor's equality policy. You should also be provided with details of any complaints procedures or harassment policies and guidelines.

Appendix Four

Required documentation from contractors prior to and post contract

By identifying whether a contract has a low, medium or high relevance to equality will have determined which section(s) of the Equalities Questionnaire needs to be completed.

However, it will also determine the level of equality monitoring you will undertake during the life of the contract. The criterion for each level of relevance is described below.

Low Relevance/Not Core Requirement

Prior to contract award:

1. All contracts deemed of low relevance must ensure that Section A of the Equalities Questionnaire has been completed and submitted.
2. This will determine whether the contractors have a written equality policy which covers:
 - recruitment, selection, training, promotion, discipline and dismissal
 - victimisation, discrimination and harassment making it clear that these are disciplinary offences within the firm
 - identification of the senior position with responsibility for the policy and its effective implementation
 - communication of the policy to staff
 - must be consistent with the Council's position on equality

Post Contract Award

3. All contracts will be required to be monitored in line with agreed contract review arrangements. A check sheet detailing the equality requirements for monitoring contracts of low relevance during the contract review is provided at Appendix 5.

Medium Relevance

Prior to contract award:

4. All contracts of medium relevance must ensure that Section A and Section B of the Equalities Questionnaire has been completed and submitted.
5. This will determine whether the contractors have a written equality policy which covers:
 - recruitment, selection, training, promotion, discipline and dismissal
 - victimisation, discrimination and harassment making it clear that these are disciplinary offences within the firm
 - identification of the senior position with responsibility for the policy and its effective implementation
 - communication of the policy to staff
6. It will also determine that they have or produced written instructions to managers and supervisors on equality in recruitment, selection, training, promotion, discipline

and dismissal of staff. These can be instructions for general equality policies in employment.

Post contract award:

7. All contracts will be required to be monitored in line with agreed contract review arrangements. A check sheet detailing the equality requirements for monitoring contracts of medium relevance during the contract review is provided at Appendix 5.
8. All monitoring reports, asked for as part of the medium relevance requirements of the contract review, will be required to be submitted at each review.
9. If the monitoring reveals under-representation of particular equality groups, work with the contractor to determine potential actions. If you require any assistance do not hesitate to contact your Departmental Equality Officer.

High Relevance

Prior to contract award:

10. All contracts deemed of high relevance must ensure that Section A and Section B of the Equalities Questionnaire has been completed and submitted.
11. This will determine whether the contractors have a written equality policy which covers:
 - recruitment, selection, training, promotion, discipline and dismissal
 - victimisation, discrimination and harassment making it clear that these are disciplinary offences within the firm
 - identification of the senior position with responsibility for the policy and its effective implementation
 - communication of the policy to staff
12. It will also determine that they have or produce written instructions to managers and supervisors on equality in recruitment, selection, training, promotion, discipline and dismissal of staff. These can be instructions for general equality policies in employment.

Post contract award

13. All contracts will be required to be monitored in line with agreed contract review arrangements. A check sheet detailing the equality requirements for monitoring contracts of high relevance during the contract reviews is provided at Appendix 5.
14. All monitoring reports or examples, asked for as part of the high relevance requirements of the contract review, will be required to be submitted at each review.
15. If the monitoring reveals under-representation of particular equality groups, work with the contractor to determine potential actions. If you require any assistance do not hesitate to contact your Departmental Equality Officer.

Appendix Five

Contract Review – Equality Check Sheet

Name of contractor:

Contract Review Date:

	Low Relevance Contract Review Sheet	Yes	No
1	Submission of equality policy for review		
2	Contract officers need to check whether there has been any new equality legislation and if there has that the contractor's equality policy has been reviewed in light of it. Has the equality policy been reviewed?		
3	Has the equality policy been reviewed to reflect changes to any of the firm's procedures?		

	Medium Relevance Contract Review Sheet	Yes	No
1	Submission of equality policy for review		
2	Contract officers need to check whether there has been any new equality legislation and if there has that the contractor's equality policy has been reviewed in light of it. Has the equality policy been reviewed?		
3	Has the equality policy been reviewed to reflect changes to any of the firm's procedures?		
4	Submission of information detailing service delivery and take-up, (where appropriate)		
5	Submission of information detailing the number of job applicants from different equality groups (race, disability and gender as a minimum)		
6	Submission of information detailing the number of employees from different equality groups (race, disability and gender as a minimum)		
7	Does the information supplied reveal any under-representation of particular equality groups		
8	If yes, please detail the proposed action to be taken:		

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	High Relevance Contract Review Sheet	Yes	No
1	Submission of equality policy for review		
2	Contract officers need to check whether there has been any new equality legislation and if there has that the contractor's equality policy has been reviewed in light of it. Has the equality policy been reviewed?		
3	Has the equality policy been reviewed to reflect changes to any of the firm's procedures?		
4	Submission of information detailing service delivery and take-up (where appropriate)		
5	Submission of information detailing the number of job applicants from different equality groups (race, disability and gender as a minimum)		
6	Submission of information detailing the number of employees from different equality groups (race, disability and gender as a minimum)		
7	Does the information supplied reveal any under-representation of particular equality groups		
8	If yes, please detail the proposed action to be taken:		
11	Has the contractor regularly consulted with its staff on equality issues?		
12	If yes, please provide details of the consultation:		
13	Submission of information detailing the monitoring of selection, training, transfer, promotion, discipline and dismissal figures (race, gender and disability as a minimum)		
14	Have the firm's recruitment advertisements and publicity material mentioned and offered equal opportunities?		

15	Does the information supplied reveal any under-representation of particular equality groups?		
16	If yes, please detail what actions have been or will be taken:		

If you have answered NO to any question, please can you state the reasons why and what actions you plan to take:

Name of Service Manager:

Signature: _____

Name of Contractor:

Signature : _____

Date of review:

A copy of this document should be retained by the Service Manager, the Contractor and a copy submitted to the relevant Departmental Equality Officer for their information, including any attachments.

Appendix Six

Government Approved Contracts / Framework Agreements

Hastings Borough Council, being a local government entity, has access to a number of government approved contracts and also supplier accreditation systems. Such systems include www.constructionline.co.uk This facility enables the Council to select firms, both small and large, to tender for building/construction type works. Consideration needs to be given to the proximity of the firms to the Borough as this could have an effect on the Council's carbon footprint which would include any environmental implications it might have in terms of travelling and waste minimization. Equally important is the need to support local businesses as this could impact on the local economy and is one of the Council's top priorities. There is some reassurance in selecting firms from this source as the firms that are registered with Constructionline have to comply with some rigorous checking which includes a section on equalities as well as financial and other elements.

Framework agreements exist for a number of goods and services. They tend to be for a period of 4 years and consist of a number of firms or contractors that can be used for supplying a range of goods and/or services. In some instances, they are nationally set up such as agreements with the Office of Government Commerce and Buying Solutions where most of the Council's computer technology is purchased. Other frameworks exist covering a certain geographical area or region whereby Council's, such as Hastings Borough Council, have access to their agreements in order to gain the best possible prices for the goods or services being procured.

If you are procuring through such either an approved contract or a framework agreement then please contact the Procurement Officer for individual guidance.

The guidance and information contained within this document has been produced as a joint venture between the Council's Legal Services Department and Procurement Section. Should anyone have any queries with the content then please contact the Procurement Section on 01424 451504 in the first instance.