

# **Equality and Diversity in Procurement**

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Guidance for Contractors and Suppliers

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# Equality and Diversity in Procurement

## Guidance for Contractors and Suppliers

### Introduction

We want to make Wigan 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 Wigan.

This document gives potential contractors and suppliers' information and advice on how the authority will promote and monitor equality in the procurement of goods, works and services through a common standard. To create your own version of this template, select File New and choose this template. Be sure to indicate "template" as the document type in the bottom right corner of the dialog. You can then:

### Wigan Council's Comprehensive Equality & Diversity Policy

Wigan Council is committed to identifying and removing barriers that discriminate or prevent equal access to services and employment.

Wigan's vision is to be an excellent Council improving people's lives. This includes valuing diversity and respecting others. Our equality and diversity agenda is therefore not just about responding to targets set by legislation or reaching performance objectives, it is about how we behave towards each other every day of our lives. As a council we are the borough's biggest employer and the wide range of services we provide affect everyone who lives or works in, or visits Wigan. We aim to make sure that everyone is confident of being able to access our services, seek employment and take an active part within the communities of the Borough without the fear of prejudice and discrimination.

Each year we enter into contracts worth many millions of pounds for buying goods, works and services on behalf of the Wigan Community. Therefore, the services provided to the community should be geared towards their diverse needs and requirements.

The promotion of equality in procurement will help to:-

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

### **What are the Council's Responsibilities?**

Wigan will apply the following guiding principles in its procurement activity;

- Translating statutory obligations such as the Race Relations (Amendment) Act 2000 into direct delivery
- Creating a positive, safe, healthy and accessible working and learning environment and a culture, in which discrimination has no part, and where everyone can achieve their full potential.
- Encouraging and welcoming people into Wigan through developing an inclusive environment and culture.
- Facilitating equal opportunities in all aspects of employment and accessible lifelong learning.
- Ensuring all procurement projects and programmes delivered by contractors adhere to equality and diversity common standards.
- Being accountable by target setting, monitoring, evaluating and reviewing performance and progress on a regular basis.
- Taking necessary action when non-compliance is identified.
- To adopt the use of standard monitoring in order to:-
  - A. Know whether the council's equality scheme and corporate equality policy are making a positive difference;
  - B. Measure whether the council is offering equality of opportunity and treatment to all; and
  - C. Help allocate resources more effectively.

Where the Council's functions are carried out by an external contractor on its behalf the Council remains responsible for meeting the general duty of equality & diversity by eliminating unlawful discrimination and promoting equal opportunities.

The Council is committed to meet the requirements of Level 2 and 3 of the Local Government Equality Standards for Procurement.

The requirements of Level 2 are detailed below;

- i. Undertake an Equality and Diversity IMPACT Assessment on the procurement function, contracted services and partnerships.

The requirements of Level 3 are detailed below;

- ii. Include a standard equality clause in all contracts
- iii. Provide guidance to both clients and contractors on good equality practice
- iv. Establish mechanisms for monitoring contractors' adherence to equality standards; and
- v. Establish systems to ensure that equal service delivery targets are met.

Wigan Council intends to increase contractor and supplier awareness and operational effectiveness in race equality in employment and equal opportunities & diversity principles by:

- ❖ Implementing contracts and framework agreements that provide equalities in procurement for Wigan Council and its Community by use of the common standard.
- ❖ Communicating the use of the common standards to all existing suppliers.
- ❖ Monitoring and assessment using the common standard.
- ❖ Offering contractors & suppliers assistance in complying with their legal obligations for non-discrimination.
- ❖ Recognising and actively consulting with contractors & suppliers who comply with the common standard.

Wigan Council aims to promote good practice to our contractors and officers responsible for contracting will consider equalities throughout the procurement process. At the supplier pre-qualification stage, the council will use the opportunity to check that contractors are aware of and have a good track record in respect of their obligations under equalities legislation. Contractors that cannot meet this requirement will present a risk and may be excluded if the risk is a serious one.

The main actions in respect of equalities will be:-

- At the planning stage officers will decide if equality is a core requirement; where it is, equality requirements will be included in contract specifications;
- In all cases model equalities contract clauses will be included;
- At pre-qualification and selection of tenderers stages, questions will be asked about equality in the work force;
- Further relevant requirements will be set at the invitations to tender stage;
- Clear tender evaluation criteria including the weighting for equalities issues will be defined; and
- Equalities standards and targets agreed as part of contracts will be monitored and where necessary enforced.

### **As a Contractor &/or Supplier how will it affect me?**

Contractors and Suppliers must be aware of and/or familiar with;

- ✚ The Wigan Council Common Standard for Equalities in Public Procurement.
- ✚ Equality and Diversity Legislation.
- ✚ What Equality and Diversity information do I need to be aware of?
- ✚ What questions will I be asked?
- ✚ What information do I include?
- ✚ How equality and diversity will be checked and monitored?

## Wigan Council Common Standard for Equalities in Procurement

Wigan Council has established a set of common standards by which they will promote and monitor equality and diversity in all of their procurement activities. The common standard requires contractors & suppliers to demonstrate that they comply with equality in employment legislation. The common standard requires firms to achieve on the following levels depending on the number of employees. Sole traders and firms employing less than 5 employees face minimum requirements, whilst firms employing 50 or more staff need to meet more comprehensive criteria as detailed below. For further information relating to the Common Standard please refer to the Appendix 1 “Common Standard for Equalities in Public Procurement”

### Equality and Diversity Legislation

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. As a potential contractor or supplier you should be familiar with the legislative obligations you should be meeting as part of the Council Common Standard. 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 2005 contain various prohibitions on discrimination on the grounds of race, sex and disability in the provision of goods, facilities and services. The council expects external contractors & suppliers to comply with all relevant 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 including; Gypsies and Irish travellers, who are recognised ethnic groups.

The Race Relations Act 1976 bans discrimination in different forms:

- ✚ Direct discrimination: treating someone less favourably than others because of their race.
- ✚ Indirect discrimination: applying a policy of equality to everyone but the policy has a negative effect on a particular racial group.
- ✚ Victimisation: discriminating against someone who has made a complaint.
- ✚ Harassment: intimidating or degrading someone.

The Act prohibits discrimination in a number of areas including the following;

- ✚ Employment: discriminating in job conditions and terms of employment; refusing to offer employment, access to opportunities for promotion,

transfer or training or to any other benefits, facilities or services; or refusing or not giving access to them, dismissing them or harassing them.

- ✚ Instructions to others and advertisements: instructing others (staff or recruitment agencies) to discriminate, or placing discriminatory advertisements.
- ✚ Services: discriminating against a person who needs goods, facilities, services or premises because of someone's race by refusing to provide them with, or by offering a lesser standard of, service, or discriminating when carrying out any function of a public authority.

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

#### The Disability Discrimination Act 1995

Since 2<sup>nd</sup> 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 1<sup>st</sup> October 1999, all service providers have had to make reasonable adjustments to enable disabled people to access goods and services. From 1<sup>st</sup> 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.

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 the grounds of gender.

The Gender Equality Public Sector will come into place in April 2007, as part of the equality bill. Part 3 of the bill creates a duty on the Council to promote equality of opportunity between women and men, and to prohibit sex discrimination in the exercise of public functions.

The Equality Bill, when it comes into place, will also outlaw discrimination in the provision of goods, facilities and services on the grounds of religion or belief and sexual orientation.

### The Human Rights Act, 1998

The European Convention on Human Rights (1950) has been incorporated into domestic law by virtue of the Human Rights Act 1998. Basic Civil and Political Rights are now enforceable in courts of law. There is a proviso for discrimination proposed under Article 14, which provides:-

‘The enjoyment of the rights and freedom set forth in this convention shall be secured without discrimination on any grounds such as sex, Race, colour, language, religion, political or other opinion, national Or social origin, association with national minority, property, birth or other status.’

### Employment Equality (Sexual Orientation) Regulations 2003 and Employment Equality (Religion/Belief) Regulations 2003

This legislation outlaws discrimination on the grounds of sexual orientation and religion or religious belief. This legislation refers specifically to employment and training, and service provision in these areas will be covered with the introduction of the Equality Bill.

### The National Equality Standard for Local Government

The National Equality Standard (NES) is a system adopted by Wigan Council to measure development in policy and practice in equality and diversity. The National Equality Standard 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 national equality standard is to emphasise 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.

### **What Equality and Diversity information do I need to be aware of?**

The Council has made itself clear when it comes to equality and diversity in procurement. No matter what the procurement is there is always going to be an equality and diversity consideration. The Council will take into account in its tender evaluation and contracting processes, a potential contractors approach to equality in terms of its employment practices and service delivery. It will do this by asking potential contractors and suppliers 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. The proportion of the consideration depends upon the relevance. However, all procurement activities will include;

- Equality and diversity in its evaluation criteria
- An equality and diversity procurement requirement clause
- A copy of the Council's Common Standard in Procurement
- A number of questions that are approved by the government in respect of race equality
- Standard Terms and Conditions (Goods & Service) the legally approved clauses relevant to equality and diversity

### **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 Council's standard terms and conditions, which contain a specific clause on equality.
- We will advise contractors, at the pre-tender stage, whether the contract is deemed to be relevant to equality and what contractors need to complete as a result. This is described in Appendix 3.
- Each contract will be given a low, medium or high relevance to equality.
- If equality is deemed of low relevance, contractors will be required to complete section A of the Equalities Questionnaire.
- If equality is deemed of low relevance, contractors will be required to complete Section A and B of the Equalities Questionnaire
- All contracts with a value of **£1 million or over** will be considered of high relevance to equality and will be required to complete Section A and B of the Equalities Questionnaire.
- The successful contractor will be required to submit and complete particular tasks at each contract review session depending on the assessed relevance of the contract to equality.

## **The Common Standard for Equalities in Public Procurement**

The Common Standard requires service providers to demonstrate that they comply with equality in employment legislation. The levels of the standard become more demanding depending on the number of staff employed by the firm. Sole traders and firms employing less than 5 employees face minimum requirements, whilst firms employing 50 or more staff need to meet more comprehensive criteria.

Service providers should note the requirements of levels 1 & 2 below before answering the questions on page 9.

### Less than 5 Employees:-

Firms with fewer than five directly employed persons must provide a written assurance that the appropriate level of the standard will be achieved following any recruitment which increases the size of the firm to 5 or more employees.

### Level 1 (5 to 49 Employees):-

All firms with between 5 & 49 employees must achieve criteria 1-4 listed below.

1. All firms must provide an equal opportunities policy in respect of race, gender and disability that covers at least:-
  - A. Recruitment, selection, training, promotion, discipline and dismissal.
  - B. Discrimination, harassment, and victimisation, making it clear that these are disciplinary offences within the firm.
  - C. Identification of the senior position with responsibility for the policy and its effective implementation.
  - D. How you communicate the policy to your staff.
2. Effective implementation of the policy in the firm's recruitment practices, to include open recruitment methods such as the use of job centres, careers service or press advertisements.
3. Regular reviews of the policy.
4. Regular monitoring of the numbers of job applicants from different genders, disabilities or ethnic groups.

### Level 2 (50 or more Employees):-

**All firms with 50 or more employees must achieve criteria 1-4 in level 1 and the additional 5-10 listed below:-**

5. Provide written instructions to managers and supervisors on equality in recruitment, selection, training, promotion, discipline and dismissal of staff.

6. Provide equality training for managers and any staff responsible for recruitment and selection.
7. in addition to criterion 4 (level 1), carry out monitoring on the number of employees from different gender, disability and ethnic groups by grade when:-
  - A. in post
  - B. applying for posts
  - C. taking up training and development opportunities
  - D. promoted
  - E. transferred
  - F. disciplined and dismissed
  - G. leaving employment
8. If monitoring reveals under-representation of the groups listed in 7 above to take steps - including positive action to address any imbalances.
9. Regular reporting and consultation on equality issues within the workforce.
10. Mention in the firms recruitment advertisements and publicity literature that equal opportunities practices are in place.

## Appendix Two

### 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.

[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 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 to 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?

Yes

No

4. Does your written equality policy cover:

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

Yes

No





If you 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

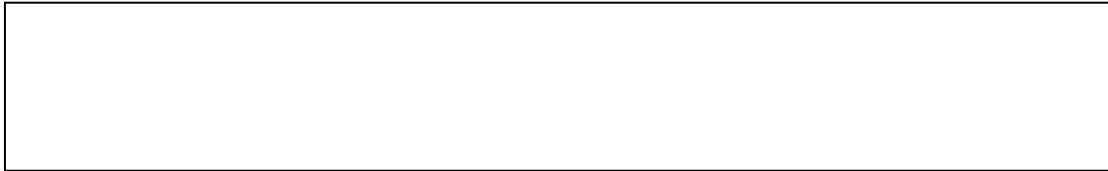
15. Do you require sub-contractors to demonstrate evidence of their equality policies and practices?

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 in Answering the Equalities Questionnaire

### Section A – Compulsory Questions

All contractors will be required to complete this section of the Equality Questionnaire. When completing the questionnaire, all companies must answer each question fully. Failure to fully answer each question required may lead us 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. It will be important to ensure that your policies are consistent with our position on equality.

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

To ensure that you can answer these questions confidently 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 detail 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 to provide details of how your firm has communicated this document to staff i.e. notice boards or issue individual employees with a copy.

### In recruitment advertisements or other literature

You will need to provide details that show your firm's commitment to equality in employment and service delivery.

Small firms you 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.

### 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 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 which details the actions they have taken to prevent a repeat occurrence.

### Question 8

This asks for supplementary evidence to questions 6 and 7 should it be required.

### 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

This asks for supplementary evidence if you answered “yes” to question 9. You should provide as much information as you deem necessary.

#### Question 11

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**

If you have been advised that your contract is of medium or high relevance to equality you will need to complete both Section A and B of the Equalities Questionnaire.

#### Question 12

You will need to provide details of the equality training managers have received in your firm.

#### Question 13

You will be required to supply details 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 can mention.

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

#### Question 14

This should be detailed in your firm’s equality policy. You should detail any complaints procedures or harassment policies and guidelines that your firm has produced.

## **The Procurement Process for Contractors**

### **Tender Information**

- Check what relevance your contract has been given to equality
- Make sure you understand in broad terms what this means to 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's

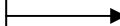
### **Selection**

- You will be asked to complete an Equalities Questionnaire.
- If equality is of low relevance to the contract you will be asked to complete Section A of this questionnaire.
- If equality is of medium or high relevance to the contract you will be asked to complete Section A and B of this questionnaire.
- The tender pack will inform you what level of relevance the contract is to equality.

### **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.
- Outline how you will fulfil all the elements of the contract

### **Awarded Contract**

Yes

No

### **After you have won a contract**

- There will be specific monitoring requirements depending on whether the contract was deemed of low, medium or high relevance to equality.