



# **Equalities in Procurement Guidance**

**April 2012**

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# Introduction

## South Gloucestershire Council & Equalities

The Council Plan sets out the Council's corporate aims and core values for meeting our area's vision.

"Equality of Opportunity for all" is clearly set out as one of our core values.

South Gloucestershire Council works for all parts of every community. Our aim is to:-

- Encourage mutual respect for all of our residents;
- Recognise and work with every diverse group;
- Give high quality inclusive services and facilities;
- Make sure our employment policies and practices are fair;
- Challenge harassment and discrimination.

The Council strives to ensure that its services are equally accessible and appropriate to the differing needs of all community sectors, regardless of race, colour, nationality, ethnic origin, sex, marriage or civil partnership, pregnancy and maternity, disability, religion or belief, age, sexual orientation or gender identity.

## Objectives of this Guidance

Equalities issues **must** be a key consideration for anyone involved in the procurement process, from identification of the service needs and objectives, to award and management of a contract.

Application of this Guidance will ensure that procurement is carried out in a way that eliminates discrimination, promotes and advances equality of opportunity, fosters good relations between different groups, is not in breach of legislation and that services provided through contracts meet the needs of all users, this includes Service Level Agreements (SLAs). By following this guidance and the **development of procurement good practice** it will be possible to:

- Deliver contracts in a way which is non-discriminatory, and promotes and advances equality of opportunity;
- Ensure that contractors deliver goods, works and services that cater for all users' needs, particularly those users who need our services most;
- Ensure that there is no difference in the satisfaction rates of users or employees, from different equalities groups;
- Encourage contractors to promote and advance equality of opportunity beyond the scope of the contract.

It is not always clear the extent to which equalities issues can be promoted and achieved through the procurement process, under procurement legislation and policy. This Guidance seeks to clarify the position..

## Procurement & Equalities

It is important that the firms awarded contracts with South Gloucestershire Council can demonstrate the same level of commitment to equality as we do. This commitment must be demonstrated in their delivery of services and in their own employment practices.

It is, therefore, our policy to **include equalities issues in the contracting process**, by taking the following steps:

- Ensuring contractors' employment policies, procedures and practices are not discriminatory;
- Ensuring that contractors provide and develop services which are appropriate and accessible, through user consultation;
- Providing opportunities for people from equalities groups to compete for our contracts;
- Monitoring whether contract delivery meets these equalities aspirations.

Following this guidance is important in countering discrimination and in fulfilling our legal obligations under equalities legislation.

## What is meant by equality and diversity?

Equalities is about making things fairer for all and amending any practice(s) that stops this from happening. It is also about ensuring that people are able to tell the organisation what they need and assist in making it happen.

It is not about treating people the same; people are different and groups of people have different needs. Organisations may need to change what they do or how they do things to make it fairer for all. Organisations contracting with the Council must provide a high quality service for everyone and that may mean working in different ways for different people. This is Diversity; not all people see things in the same way. Seeing things in different ways can help organisations to do things in a better way so that everyone can be included.

To make sure this happens, organisations need to do the following:

- Welcome different ways of doing things.
- Provide equal opportunities for all.
- Value and respect everyone.
- Make sure that everyone is treated fairly.
- Ensure that they comply with all legislation.

**The Council must ensure, on an ongoing basis, that organisations who we contract with work in these ways.**

## Legal Framework and Relevant Policy

**South Gloucestershire Council remains responsible for meeting our extensive statutory equality duty and complying with legislation even where functions are carried out all, or in part, by external suppliers.** We, therefore, expect everyone working on our behalf to practice equal opportunities, and be able to demonstrate that they take all reasonably practicable steps to ensure access and equal treatment in employment and service delivery for all.

Firms and organisations that are awarded contracts by South Gloucestershire Council are acting on our behalf. They will be expected to comply with all current equality legislation, practice equalities in employment and service delivery and ensure that the council meets requirements of the Public Sector Equality Duty by proactively working with us.

The Council has a duty to provide services that demonstrate best value, whilst ensuring that policies promote and advance equality of opportunity, support local diversity and do not lead to unfair discrimination or social exclusion.

Council spending contributes to local sustainability and regeneration, and citizens have a right to expect that the money spent by their Council on goods and services will promote, advance and protect equalities.

Under UK legislation, Councils must embed equal opportunities in their contracts.

### The Public Sector Equality Duty

Equality Duties are not new to the Council. The Duty to Promote Race Equality came into force in 2002, The Duty to Promote Disability Equality came into force in 2006 and The Gender Equality Duty in 2007.

The Equality Act 2010 has replaced these three separate Duties with a single Public Sector Equality Duty. This single Equality Duty encompasses the following 9 “Protected Characteristics”:

1. Age
2. Disability
3. Gender Reassignment
4. Marriage and Civil Partnership
5. Pregnancy and Maternity
6. Race
7. Religion or Belief
8. Sex
9. Sexual Orientation

The Public Sector Equality Duty states that a public authority must, in the exercise of its functions, have due regard to the need to:-

- 1. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;**
- 2. Advance equality of opportunity between persons who share a protected characteristic and persons who do not share it; this means:-**
  - removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
  - taking steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
  - encouraging persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 3. Foster good relations between persons who share a protected characteristic and persons who do not share it; this means:-**
  - tackling prejudice.
  - promoting understanding.

**Firms and organisations that are awarded contracts by South Gloucestershire Council are acting on our behalf. They will be expected to comply with and contribute to the ways in which the Council delivers the above Duty, practicing equalities in employment and service delivery.** Core ways in which they are required to achieve this is through monitoring employment and service delivery and through the analysis of this monitoring information to identify improvements actions.

## **The Equality Act 2010 – An Overview**

There has been legislation in force in the UK in the area of Equal Opportunities for many years. This legislation has included the following key Acts:

- Equal Pay Act 1970
- Sex Discrimination Act 1975
- Race Relations Act 1976
- Disability Discrimination Act 1995
- Sex Discrimination (Gender Reassignment) Regulations 1999
- Employment Equality (Sexual Orientation) Regulations 2003
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Age) Regulations 2006

The Equality Act 2010 has brought together and replaced these major pieces of Equal Opportunities legislation as well as bringing together around 100 other instruments within **a single Act**. It covers the same groups that were protected by the previous legislation and refers to these as “**Protected Characteristics**”.

## PROTECTED CHARACTERISTICS

The nine “Protected Characteristics” as set out in the Equality Act 2010 are:

1. Age
2. Disability
3. Gender Reassignment
4. Marriage and Civil Partnership
5. Pregnancy and Maternity
6. Race
7. Religion or Belief
8. Sex
9. Sexual Orientation

## TYPES OF DISCRIMINATION

The Act defines eight different types of discrimination as follows:

<b>Direct Discrimination</b>	This occurs when a person is treated less favourably because of a protected characteristic they have.
<b>Indirect Discrimination</b>	This occurs when a condition, rule, policy or practice that an organisation has in place disadvantages people who share a protected characteristic - even if the condition, rule, policy or practice is applied to everyone.
<b>Discrimination arising from Disability</b>	This occurs when a disabled person is treated unfavourably because of something connected with their disability and the unfavourable treatment cannot be justified.
<b>Associative Discrimination</b>	This occurs when a person is treated less favourably than another person because they associate with another person who possesses a protected characteristic.
<b>Victimisation</b>	This occurs when someone is treated badly because they have made or supported a complaint or raised a grievance under the Equality Act.
<b>Perceptive Discrimination</b>	This occurs when a person is treated less favourably than another person because others think they possesses a protected characteristic – even if the person does not actually possess that characteristic.
<b>Harassment</b>	This is unwanted conduct related to a protected characteristic which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.
<b>Third Party Harassment</b>	This is when an employee faces unwanted conduct related to a protected characteristic which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual by people who are not employees of the organisation.



## PROTECTED CHARACTERISTICS – KEY POINTS

### Age

The Equality Act protects people of all ages.

Different treatment because of age is not unlawful if it can be objectively justified i.e. it can be demonstrated that it is a **proportionate means of achieving a legitimate aim**.

### Gender Reassignment

The Act provides protection for transsexual people.

A transsexual person is someone who proposes to, starts or has completed a process to change his or her gender.

The Act does not require a person to be under medical supervision to be protected – so a woman who decides to live permanently as a man but does not undergo any medical procedures would be covered.

Transgender people such as cross dressers, who are not transsexual because they do not intend to live permanently in the gender opposite to their birth sex, are not protected by the Act.

It is discrimination to treat transsexual people less favourably for being absent from work because they propose to undergo, are undergoing or have undergone gender reassignment than they would be treated if they were absent because they were ill or injured. Medical procedures for gender reassignment such as hormone treatment should not be treated as a 'lifestyle' choice.

### Sex

Both men and women are protected under the Act.

### Marriage and Civil Partnership

The Act protects people who are married or in a civil partnership.

Single people are not protected.

### Sexual Orientation

The Act protects bisexual, gay, heterosexual and lesbian people

## Disability

The Equality Act protects anyone who has, or has had, a disability, for example, if a person has had a mental health condition in the past that met the Act's definition of disability and is harassed because of this, it would be unlawful.

The Act defines disability as a physical or mental impairment which has a substantial and long-term adverse effect on his/her ability to carry out normal day-to-day activities.

'Substantial' means more than minor or trivial.

'Impairment' covers, for example, long-term medical conditions such as asthma and diabetes, and fluctuating or progressive conditions such as rheumatoid arthritis or motor neurone disease. A mental impairment includes mental health conditions such as bipolar disorder or depression, learning difficulties such as dyslexia and learning disabilities such as autism and Down's syndrome. Some people, including those with cancer, multiple sclerosis and HIV/AIDS, are automatically protected by the Act. People with severe disfigurement will be protected without needing to show that it has a substantial adverse effect on day-to-day activities.

Discrimination is not unlawful if a service provider can show that it did not know, or could not reasonably be expected to know that the person was disabled. This means that employers and service providers need to take reasonable steps to find out whether someone is disabled, though care needs to be taken to ensure that any enquiries do not infringe the disabled person's privacy or dignity.

There is a legal requirement to make reasonable changes to the way things are done; this could include changing a policy, making changes to the built environment, such as making changes to the structure of a building to improve access, and providing auxiliary aids and services, such as providing information in an accessible format, an induction loop for customers with hearing aids, special computer software or providing additional support for employees or customers using a service.

Where a service is delivered from a building that cannot be made accessible through reasonable adjustments, it may be a reasonable adjustment to provide the service at a different venue, which, as an example, could include a home visit.

Reasonable changes are required wherever disabled employees, potential employees or potential customers would otherwise be at a substantial disadvantage compared with non-disabled people. A substantial disadvantage is more than a minor or trivial disadvantage. Service providers and employers cannot charge disabled customers for reasonable adjustments. What is reasonable will depend on all the circumstances, including the cost of an adjustment, the potential benefit it might bring to others (for example, ramps and automatic doors benefit people with small children or heavy luggage), the resources an organisation has and how practical the changes are.

The Equality Act 2010 requires that service providers must think ahead and take steps to address barriers that impede disabled people. It is not acceptable to wait until a disabled person experiences difficulties using a service, as this may make it too late to make the necessary adjustment (this is an anticipatory and continuing duty owed to disabled people generally, regardless of whether it is known that a particular person is disabled or whether there are currently any disabled service-users).

### **Pregnancy and Maternity**

A woman is protected against discrimination on the grounds of pregnancy and maternity during the period of her pregnancy and any statutory maternity leave to which she is entitled. During this period, pregnancy and maternity discrimination cannot be treated as sex discrimination.

It is unlawful to take into account an employee's period of absence due to pregnancy-related illness when making a decision about her employment.

It is unlawful to discriminate against a woman because she is breastfeeding. Women to whom an organisation is providing goods, facilities and services should be able to breastfeed should they so wish.

### **Race**

'Race' includes colour, nationality, and ethnic or national origins. A racial group can be made up of two or more different racial groups, for example, Black Britons.

'Ethnicity' is where a group has a long shared history and cultural tradition, come from a common geographical area, descend from a small number of ancestors, have a common language or literature and a common religion.

### **Religion or Belief**

Religion includes any religion. It also includes a lack of religion, in other words people are protected if they do not follow a certain religion or have no religion at all.

A religion must have a clear structure and belief system.

Belief means any religious or philosophical belief or a lack of such belief. To be protected, a belief must satisfy various criteria, including that it is a weighty and substantial aspect of human life and behaviour.

Denominations or sects within a religion can be considered a protected religion or religious belief.

Humanism is a protected philosophical belief.

Political beliefs would not be protected.

Discrimination because of religion or belief can occur even where both the discriminator and recipient are of the same religion or belief.

# The Relevance of Equality to Particular Contracts

At the beginning of any procurement project there are three key equality issues to consider.

## Relevance

- Equalities is more relevant to some contracts than others
- Equalities is particularly relevant where there is interaction between contractors and members of the public or council employees.

## Proportionality

- The more relevant equalities issues are, the more they need to be considered at each stage of the procurement process.
- Look at the nature and purpose of each contract and the effect it could have on different groups of the community.
- The size, value and length of the contract are also key considerations.
- It may be appropriate to consider simpler procedures and requirements for some small, low value, one-off or short-term contracts.

## Core requirements

- A “core requirement” is an essential part of the contract.
- It is most likely when procuring services which are provided directly to the public or where there is direct contact between contractor’s staff and council employees.
- Equality is more likely to be relevant to contracts for services but may also be a core requirement for contracts for goods or works.

**A decision will need to be made as to whether equalities is core to a contract - additional equalities questions will need to be added to the PQQ when it has been identified that equalities is core. The following guidance can be used to help identify whether equalities is core to a contract.**

**Equalities will be core to a contract if:**

**1. The contract is a major one in terms of scale or significance.**

i.e.

- It affects large numbers of people.
- The nature of the general impact on people.
- Scale.
- ‘Profile’ e.g. likely to receive considerable attention.
- It has a high relevance to ensuring that the Council meets the “Equality Duty” i.e. to eliminate discrimination, advance equality of opportunity, and foster good relations.

**2. There is clear indication that, although the contract may be a minor one, it is likely to have a major impact upon certain groups in terms either of numbers affected or the seriousness of the likely impact, or both.**

i.e.

- A contract which is not in itself major, but could have a significant or major impact on certain groups of people.

- A contract or element of it could be highly relevant for some groups of people, although not necessarily a large number of people from those group/s.

The Council's Equalities Team can be contacted to discuss whether equalities may be core to a contract. Additionally, completed Equality Impact Assessments should be reviewed when making decisions on whether or not equalities is core to a contract – these are available on Departmental intranet pages and/or by contacting a representative from your Departmental Equalities Working Group.

## Examples

### Services

Equalities issues are likely to be a core requirement where the service is provided directly to members of the public.

For example, the provision of education, community care, housing, information or advice services.

Even in some services that initially appear to have little relevance to equality, there may be aspects where equality is relevant. For example, where the service requires an awareness of different languages or cultural differences.

### Goods

The primary concern in contracts for goods is that the goods need to be 'fit for purpose'. In certain contracts 'fitness for purpose' means the goods need to be capable of meeting the needs of particular community groups. For example, staff uniforms accommodating cultural differences.

### Works

There may be equality implications in works contracts. The conduct of contractor's employees towards Council staff and towards members of the public is a key equality requirement in these contracts.

## Existing Contracts

Current contracts and procurement projects that are in progress will still need to comply with the Equality Duty, as well as the wider provisions of the Equality Act 2010. It is recommended that any contracts currently in operation are reviewed in the light of this Guidance. There may be a need to amend some contracts to ensure there is no breach by the Council of its Duty and/or wider legislation.

All contracts currently in operation should be monitored to ensure that any equality requirements set out in the specification and/or contract conditions are being met.

## Employee Issues

As a result of some procurement projects, Council staff may be transferred to the successful contractor. In these circumstances the **Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE)** apply.

These regulations protect employees' terms and conditions when the business in which they work is transferred from the Council to an external contractor. In equalities terms the contractor must guarantee protection against discrimination and provide for equality of opportunity by preserving the terms and conditions of employment.

The Council is also duty-bound to ensure that the service providers it employs offer new staff who work alongside transferred staff a package of terms and conditions that is overall, no less favourable than that received by the transferred staff. This seeks to prevent a two-tier workforce from developing.

In selecting contractors the aim should be to secure for staff a package of terms and conditions which will secure high quality service delivery. The contractor's terms and conditions need to be designed to recruit and motivate high quality staff who have the ability and knowledge to meet the requirements of the contract, which may include equalities related matters.

## Encouraging Diverse Suppliers

The Council aims to encourage a diverse range of suppliers to compete for contracts.

As examples, Black, Asian and Minority Ethnic (BAME) businesses, Small and Medium Enterprises (SMEs), or businesses owned or managed by women and people with disabilities, may provide products and services that the Council wish to purchase. In some cases the products or services may be more appropriately delivered by such businesses who might be better able to meet the contract requirements. However, these firms may not be fairly represented amongst the contractors the Council uses.

### **How can the Council encourage these firms?**

Look at **how the contract is packaged** and **how and where proposed contracts are advertised** in order to attract the widest range of potential suppliers. However, in packaging contracts care must be taken not to offend the EU Rules, which precludes packaging in order to avoid the application of the Regulations, for example, breaking down contracts into small lots, below the tendering thresholds.

# Building Equality into the Procurement Process

The following sections relate very much to contracts where it has been determined that equality is a **core** element. However, equality issues should be considered for all contracts. Please see Appendix A for a checklist of the key action points.

To ensure that equalities objectives are delivered, **appropriate service standards and targets** should be used in the **specification** and **effective monitoring** developed to ensure that these standards and targets are delivered.

## Stage One: Project Scoping

### Service Review

Conduct a review of the existing service provision to establish whether it is still meeting the needs of current users and whether it will meet the needs of users.

Using equalities **monitoring data** the diversity of service users can be investigated. This will contribute towards the process of identifying service users' needs. Census data will also show any significant changes that may need to be taken into account when determining service requirements e.g. an ageing population.

Completed Equality Impact Assessments will be vital in providing information on equalities impact.

### Consultation

Consulting service users will help to identify their needs.

It is essential to ensure that any review and consultation exercise is representative of all relevant sections of the community and that consultation results can be analysed in relation to the feedback obtained by different groups.

### Risk assessment

Potential risks associated with the contract should be identified, including those relating to equalities. These should be taken into account when writing the specification and the other contract documents

### Management, Monitoring and Control of the Contract

Consideration needs to be given to how the equalities aspects of the contract will be managed, monitored and controlled. Processes and requirements should be written into the contract documents (usually in the specification) in order to aid effective contract monitoring.

### Service needs & objectives

Identified equalities needs and objectives may require changes in the way a service is delivered or the goods provided.

The impact equalities will have on the contract documents will depend whether equality was assessed as being a core requirement

## Workforce Issues

If the contract involves Council staff transferring to an external contractor the implications and TUPE need to be considered.

## Contract Packaging

The contract must be packaged to deliver best value. However, consideration needs to be given to establish if the packaging discourages or eliminates certain contractors.

## Stage Two: Contract Preparation

### What contract documents are needed?

- Pre-Qualification Questionnaire
- Contract conditions
- Specification
- Invitation to tender

### Pre-Qualification Questionnaire (PQQ)

The equalities questions contained within the revised **standard** PQQs are the minimum that should be asked to comply with best practice. The PQQs contain a set of questions that should be asked for all contracts. There is also a set of **additional** equalities questions that **must** be used when equalities is core to the contract (guidance on when to use the additional questions is included in the revised standard PQQs). Procurement officers should also include supplementary equalities questions that relate specifically to the individual contract – these would be in addition to the questions included in the standard PQQ.

### Invitation to Tender

The invitation to tender **must** include information on the Equality Duty, in what ways the successful tenderer will be expected to comply with the Duty and our commitment to equalities generally. This information should allow tenderers to understand the Council's requirements in terms of equalities and submit a tender that encompasses these elements.

### What information should be included in the Invitation to Tender?

The following documents should be included for contracts with equality as a core requirement:

- The Council's Equality and Diversity Policy and Single Equality Plan.
- Facts about the local population where they are relevant to the contract, including population data (this information can be gained from the Single Equality Plan and/or the Equalities Team)
- Details of the current provision of service e.g. information on what monitoring information currently shows, or a copy of any relevant Equality Impact Assessment if relevant and appropriate.

- Summary of the main challenges to improve equality performance under the proposed contract, if applicable
- Terms & conditions for the transfer of staff to the contractor under TUPE, if applicable.

It is important to make clear what is expected from tenderers as evidence of their ability to meet the equality elements of the specification. This might include information on the staff that would perform the contract, where necessary. For example, details on staff qualifications and training, supervision arrangements, language skills and knowledge of particular cultures. Method Statements could be requested, in which tenderers can demonstrate their preferred methods to delivering the equality outcomes in the specification.

The invitation to tender must set out the criteria to be used in evaluating tenders, including any equalities criteria.

## Specification

The equalities needs and objectives identified during the earlier stages of the procurement process will contribute towards the specification. The contract specification should be used to set out explicitly what the contractor is required to do in terms of equalities.

Ideally, the equality requirements should be expressed as a set of outcomes or performance targets wherever possible. This will make it easier to monitor performance. It may also be necessary to specify how the supplier will evidence their performance.

With a clear specification it is more likely that the contractor will meet your requirements and expectations. **Do not expect contractors to deliver something not specified.**

## Contract Conditions

The contract conditions set out the legal requirements and conditions under which the contractor must operate the contract. Equalities requirements can be inserted and can be monitored. The Conditions alert contractors to all the relevant equalities standards and practices they should be following in delivering the contract (and which should be set out in the specification), see Appendix B.

## Dealing with complaints from users

Included in the specification should be a requirement for contractors to develop a system for receiving, logging and forwarding complaints from users.

## Stage Three: Letting the Contract

### a) Advertising

A notice submitted to the Official Journal of the European Union and any adverts placed in newspapers or journals should state where equality is to be evaluated as a core requirement.

Adverts should not be placed in a way that could discriminate against certain suppliers, particularly minority firms.

### ***b) Expressions of Interest***

At this stage it is only permissible to measure certain criteria – personal standing, economic and financial standing, and technical capacity. Technical capacity includes the contractor's capacity to meet relevant legislative requirements, including equalities.

Where the contract involves the provision of a service the PQQ can enquire as to the providers' capacity to meet equality issues in service delivery, as well as to equality in the supplier's workforce.

Before issuing PQQs it must be clear what evidence is to be required and how it will be evaluated.

### ***c) PQQ Evaluation***

At the Pre Qualification stage, candidates (or their employees) who have breached equality legislation, or equivalent laws, may be excluded from the tendering process. However, where there is evidence that candidates have rectified and/or prevented a reoccurrence of the misconduct we would not be likely to exclude them.

Where equalities is core to the contract, if the contractor's policy and supporting evidence does not meet the Council's requirements, we can give suggestions on how they can improve in order to comply. Once contractors can demonstrate that they have made sufficient improvement firms will be entitled to apply again for future contracts.

### ***Taking account of size***

Smaller firms cannot always be expected to have the resources to develop their equalities policies and procedures to the same extent as larger organisations. It may be appropriate to use different evaluation thresholds for different sizes of firms.

The West Midlands Forum Common Standard for Equalities in Public Procurement is an example of an assessment system where more is expected of larger organisations than smaller ones, in respect of equality issues (see Appendix C).

### ***d) Invitation to Tender***

Ensure that all the required documents are enclosed.

### ***e) Tender Evaluation***

Each tender must be evaluated against the tenderers' ability to meet the requirements of the specification (including those relating to equalities) - see Appendix D and Appendix E.

### ***f) Contract Award***

It is good practice to inform all unsuccessful tenderers of the outcome, and provide them with feedback on their tender even if they do not specifically request it. This gives an opportunity to offer unsuccessful tenderers advice, giving them help in improving the equalities aspects of their future bids.

In respect of contracts governed by the EU Procurement Rules, then the requirements regarding providing information to contractors must be followed.

## Stage Four: Managing the Contract

The inclusion of equalities issues will only be effective if contractors' performance and practices are monitored during the course of the contract to ensure that they are meeting their commitments.

### Initial meeting

Before the contract begins, a meeting should be held with the contractor to develop a clear, mutual understanding of the contract, including the equality aspects which will assist the council in discharging its Public Sector Equality Duty. It is essential to ensure that the contractor understands their responsibilities including equalities issues.

Also ensure that the contractor understands what monitoring will take place and what information they must provide for these purposes.

### Continuous Monitoring

In **all** contracts, monitoring should continue throughout the contract to check that standards and requirements are being met.

The Community Care and Housing department and the Children and Young People department have extensive and detailed equalities monitoring systems in place for contracts.

For other departments two questionnaires have been developed to monitor equalities issues throughout the life of the contract – one for when equalities is core to the contract and one for when equalities is non core.

These **standard** questionnaires mirror the questions asked in the **standard** PQQs. They are the minimum that should be asked. Any supplementary equalities questions that are contract specific may also be included in the monitoring questionnaire, at the discretion of the individual Procurement Officer (who may wish to contact the Equalities team for advice and guidance).

N.B. The Children and Young People department will also use the standard monitoring questionnaires for non core equalities contracts.

### Frequency of Monitoring Using the Two Standard Questionnaires

**Core Equalities Contract Monitoring Questionnaire** – where equalities is core to the contract, this monitoring questionnaire should take place annually or as detailed in the contract specification. The council has a duty to publish this monitoring information in its Annual Equalities Report and should therefore be discussed with the Equalities Team during May each year.

**Non Core Equalities Monitoring Questionnaire** – where equalities is non core to the contract, this monitoring questionnaire should be completed annually. The council has a duty to publish this monitoring information in its Annual Equalities Report and should therefore be discussed with the Equalities Team during May each year.

## Dealing with problems

If problems are identified, arrange to meet with the contractor. Begin by agreeing that there is an issue and then suggesting action that needs to be taken by the contractor to rectify the situation. A time period can be given in which we expect to see improvements to their service. Ultimately, if the contractor does not make improvements and rectify the situation, the contractor can be deemed to be in breach of the contract.

The Council will reserve the right to terminate a contract for serious breaches which shows an inability or unwillingness by the contractor to comply with the Council's Equality and Diversity Policy and Single Equality Plan.

## **Stage Five: Contract Review**

In line with the duty to achieve best value it is necessary to review and evaluate a contract as a whole as it nears its end. In the context of equalities you will want to evaluate the extent to which the contract has achieved the specific equalities objectives and has promoted and advanced equality.

## Checklist for Procurement Officers

- Conduct a service review and consult users to ensure that all equalities requirements are taken into account. Make sure that this is done in such a way as to allow the differing needs of users to be identified and analysed.
- Identify all needs and objectives in relation to equalities
- Ensure that there is an understanding of the requirements of equalities legislation, including the Equality Duty, and other relevant policies, amongst those involved in the procurement project
- Determine whether equalities is a core requirement of the contract
- Include additional equality requirements in the specification where equality is a core requirement
- Include non-discrimination contract conditions plus any other relevant equalities contract conditions, such as the contractor carrying out Equality Impact Assessments and conducting regular equalities monitoring on their work.
- Ensure that the contract is appropriately packaged
- Identify appropriate selection criteria
- Using the PQQ, check contractors' ability to deliver equality in employment and service delivery
- Check the specification contains all equalities related issues
- Include all relevant equalities information in the Invitation to Tender
- Evaluate tenders for meeting the equality requirements in the specification, using the pre-determined criteria
- Check that the contractor has accepted the equalities contract conditions.
- Provide feedback to unsuccessful contractors
- Meet the successful contractor to discuss the equalities contract conditions and other relevant issues
- Monitor the contractor's performance in terms of equalities as set out in the specification and contract conditions

## Equality in Procurement – Contract Clauses

*Please refer to the Equalities in Procurement intranet page where there are links to model contracts that contain essential basic clauses relating to equalities.*

The **West Midlands Forum (WMF) Common Standard for Equalities in Public Procurement** requires service providers to demonstrate that they comply with equality in employment legislation.

This Appendix is shown in order to show an example for where it may be appropriate to use different evaluation thresholds for different sizes of firms.

### **Less Than 5 Employees**

Firms with fewer than 5 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 and 49 employees must achieve criteria 1 to 4 listed below.***

1. All firms must provide an equal opportunities policy in respect of all 9 protected characteristics as laid out within The Equality Act 2010 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 gender, disability and ethnic groups.

### **Level 2 (50 or More Employees)**

***All firms with 50 or more employees must achieve criteria 1 to 4 in Level 1 and the additional criteria 5 to 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 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 firm's recruitment advertisements and publicity literature that equal opportunities practices are in place.

### **Tender Evaluation – What is required from Tenderers? – Points to Consider**

*The relevance of each of the following points depends on the specific contract and role of equalities in the contract.*

- Contractors' responses on how they would achieve and implement the requirements set out in the specification
- Contractor's understanding of the authority's equalities policies and the equalities provisions in the specification
- A working knowledge and experience of implementing equal opportunities
- A verifiable commitment to equal opportunities
- An understanding of equalities needs in employment and in the provision of public services
- Commitment to train staff in implementing the specification, if necessary
- Commitment to monitor the take up of the service and to take action in response to monitoring results, and to provide this information to the council in order that performance can be monitored and published in accordance with The Public Sector Equality Duty.
- Plans to consult with users and potential users and how equalities considerations will form a central part of this.
- Existence and/or development of appropriate complaints procedures
- Provision of information in appropriate languages and alternative formats
- Commitment to outreach and development work to increase access, where relevant

The key consideration in evaluating tenders is that suppliers have the requisite technical capacity to deliver what is required.

**In evaluating tenders it is not possible to re-introduce any of the matters that were addressed at pre-qualification stage.**

**Evaluating Method Statements – Points to Consider**

- Number, qualifications and experience of staff to be deployed on the contract
- How the contractor will maintain the required level of expertise over the length of the contract
- How the particular service will be managed
- Quality systems to be employed in the service
- How performance standards/targets will be achieved and maintained
- The contractor's technical approach
- Their ability and resources to carry out the specified service
- Proposals for promoting customer care
- Methodology for seeking user involvement and utilising user views
- How equalities policies will be implemented in service delivery and employment
- How the contractor will meet the needs of specific groups e.g. women, young people, ethnic groups, as relevant to the contract
- Proposals for developing and improving the service
- Training proposals to implement procedures, customer care, and equalities, and to attain and maintain performance standards