

Guidance on  
Equality and Diversity  
in Letting Contracts

February 2012



## Introduction

This guide is intended to assist managers with understanding Kent County Council's guidelines on equality and diversity in procurement. The Council's Equality and Diversity Policy highlights our commitment to ensuring that current and potential service users, employees or job applicants will not be discriminated against on the grounds of social circumstances or background, gender, race, ethnic origin, disability, sexual Orientation, age, religion or belief.

The principles of tolerance and understanding and respect for others are central to this and the Council expects any supplier doing business with the Council shares this commitment by offering equality of opportunity and operating in a non –discriminatory manner.

The Council's procurement policies encompasses equality issues into the procedures it follows. This document provides guidance on understanding and complying with equality issues when letting contracts or commissioning consultants. It includes both the Council's statutory obligations and the policies that the Council has adopted.

## The Council's Commitments

The Council is committed to promoting Equality and Diversity. In order to ensure that these requirements are addressed in procurement, the Council has some key considerations.

### 1. Statutory Duties and Legislation

The Council complies with European Regulations and Directives and the Equality Act 2010.

The Equality Act 2010 became law on 1 October 2010. One of the Act's main objectives is "to enable duties to be imposed in relation to the exercise of public procurement functions"

The Act requires public authorities to 'have due regard' to:

- eliminate unlawful discrimination
- advance equality of opportunity
- foster good relations when exercising their functions.

Public bodies need "to consider the needs of diverse groups in the community when designing and delivering public services". This also applies to private bodies exercising public functions.

The act seeks to invoke a cultural shift in how public authorities pursue equality objectives through their procurement activities. It also notes that:

- “a common approach to equality in public procurement could reduce burdens on business applying for public sector contracts” and “make it easier for small and medium-sized businesses to compete.”

Local authorities are explicitly permitted to take non-commercial matters into account during the procurement process, when they consider it is ‘necessary’ or ‘expedient’ to do so. This is in order to comply with the Single Equality Duty.

The Equality Act 2010 aims to deliver equal employment and service outcomes in public services whether they are delivered directly or through contracts. Procurement practices should fully embrace the principles of the Equality Act 2010 and all contracts should be subject to equality impact assessment (EqIA), equality objective setting and monitoring. Contractors should understand the Equality Act 2010 and agree to work within the Act. Contract monitoring and management will be designed to secure the delivery of all objectives including equality.

## 2. Documents

There are several key documents relating to the procurement process that include equality issues, all of which can be found on [kent.gov.uk](http://kent.gov.uk)

- The Council’s [‘Procurement Strategy’](#) sets out our strategic approach to procurement.
- [‘Spending the Council’s Money’](#) is Kent County Council’s principal document on procedures of the procurement process.
- Our [‘Equality and Diversity Policy Statement’](#) highlights the Council’s commitments to Equality as a whole.

## The Council's Process

### 1. Contract Procedures

#### 1.1 Relevance

Equality issues will be more relevant to some contracts than others, so at the outset of the procurement process, you should assess the proposed contract for its degree of relevance to equality.

The Council has a legal duty to ensure that all existing and new contracts undergo an equality impact assessment (EqIA). Equality impact assessments are a key element of risk planning, will highlight any potential issues in advance and provide robust evidence of good practice. They are also the easiest way to assess a proposed contract's degree of relevance to equality (See Appendix 1 for example).

You can get copies of the equality impact assessment forms and guidance on how to use these on [kent.gov.uk](http://kent.gov.uk) in the [Equality and Diversity](#) publications section.

(Or contact the Corporate Diversity team on [diversityinfo@kent.gov.uk](mailto:diversityinfo@kent.gov.uk) or by telephone on: 01622 221163, Freecall: 70001163).

Where equality issues are highly relevant to the contract it will need to be a core requirement in the specification. Where equality issues are less relevant it may still be appropriate to refer to them in the contract conditions.

#### 1.2 Tender Documentation

Once equality impact has been assessed for a contract, we are able to set out exactly what the contractor is required to do. By including equality considerations at this stage, potential suppliers have the best chance of meeting our expectations. Requirements should be specified as far as possible in terms of outputs and performance so that potential suppliers have freedom to address the requirements in the most effective way possible.

#### 1.3 Diversity Questionnaire

A Diversity Questionnaire will form part of the tender process either at pre-qualification or tender submission stage.

As part of this selection process, any potential suppliers who have broken the law or been found guilty of misconduct may be disqualified from the tender process. Therefore where a Pre Qualification Questionnaire is used potential suppliers should be assessed on equalities issues as well at this stage.

If you have not used a PQQ the questionnaire should be used as part of the tender.

The Diversity Questionnaire is included as Appendix 2.

#### 1.4 Tender evaluation

Where equalities have been assessed as a core requirement to the specifications of the contract, they form part of the quality evaluation of the tender. To achieve Best Value, weightings are applied to both 'quality' and 'price'. These can vary for different projects and can be influenced by the proportion of service delivery in the contract and the level of the interaction with the end user. This evaluation directly affects the decision to award the tender to a particular service provider.

#### 1.5 Terms and Conditions

Where it is appropriate to reflect the council's general obligations through contract conditions clauses similar to the following must be included:

23. Throughout the duration of this Contract the Supplier shall, and in addition shall ensure that its sub-contractors shall: discharge their obligations under this Contract and perform the Services in accordance with their responsibilities under the provisions of the Sex Discrimination Act 1975, Race Relations Act 1976 (Amended 2000) and the Disability Discrimination Act 1995 and Codes of Practice issues by the Equality and Human Rights Commission and shall in addition discharge its obligations under this Contract and provide the Services in manner consistent with the Council's Equality and Diversity Policy Statement.

#### **22.20 Equal Opportunities**

22.20.1 The Supplier shall operate an equal opportunities policy and warrants that this policy shall comply with all relevant law. A copy of the Supplier's policy shall be made available on request by the Council.

22.20.2 If any Court or tribunal or the Equality and Human Rights Commission should make any finding of unlawful discrimination against the Supplier the Supplier shall take all necessary steps to prevent recurrence of such unlawful discrimination.

22.20.3 The Council may require the Supplier to provide full details of the steps taken to prevent such recurrence as aforesaid.

Guidance and assistance with appropriate terms and conditions for your contract must be obtained from Legal Services who will be able to advise you of the diversity requirement.

([peter.mulholland@kent.gov.uk](mailto:peter.mulholland@kent.gov.uk) or by telephone on: 01622 694400/ Freecall 7000 4400)

### 1.6 Contract Monitoring and Contractor Performance

In order to ensure that the Council's requirements regarding equality are being met, we include equality considerations as part of the monitoring process that the contract manager undertakes.

The questionnaire for monitoring equality performance is used to ensure the contractors compliance throughout the duration of the contract and is particularly important in contracts where diversity is a core requirement. The results of the diversity questionnaires for monitoring are reported back to the Procurement Forum for review. (See Appendix 3 for example questionnaire)

### Training

During 2012 a range of procurement training modules will be developed including equality related procurement issues.

## Useful Contacts

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|--|---|
| <p><b>Kent County Council's Equality and Diversity policy</b> can be found at :</p> <p><a href="http://www.kent.gov.uk/council-and-democracy/priorities-policies-and-plans/policies/equality-diversity-policy.htm">http://www.kent.gov.uk/council-and-democracy/priorities-policies-and-plans/policies/equality-diversity-policy.htm</a></p>             | <p><b>Kent County Council's Strategic Procurement.</b><br/><b>Henry Swan</b><br/>Room 3.06<br/>Sessions House<br/>Maidstone, Kent<br/>ME14 1XQ<br/>Tel: 01622 694529<br/>Fax:01622 673806<br/>nick.vickers@kent.gov.uk</p>                    |
| <p><b>The Equality and Human Rights Commission – Main Office</b><br/>Arndale House,<br/>The Arndale Centre,<br/>Manchester, M4 3AQ<br/>Tel: 0161 829 8100<br/>Fax: 01925 884 000<br/><a href="mailto:info@equalityhumanrights.com">info@equalityhumanrights.com</a><br/><a href="http://www.equalityhumanrights.com">www.equalityhumanrights.com</a></p> | <p><b>The Low Pay Commission</b><br/>Ground Floor,<br/>1 Victoria Street,<br/>London<br/>SW1H 0ET<br/>Tel: 020 72155773<br/>Email.: <a href="mailto:lpc:lowpay.gov.uk">lpc:lowpay.gov.uk</a></p>  |
| <p><b>Employers Forum on Age</b><br/>Floor 3<br/>Downstream<br/>1 London Bridge<br/>London<br/>SE1 9BG<br/>Tel: 0845 456 2495<br/>Fax: 020 7785 6536<br/><a href="http://www.efa.org.uk/">http://www.efa.org.uk/</a></p>   | <p><b>Employers Forum on Disability</b><br/>Nutmeg House<br/>60 Gainsford Street<br/>London<br/>SE1 2NY<br/>Tel: 020 7403 3020<br/>Fax: 020 7403 0404<br/><a href="http://www.employers-forum.co.uk">http://www.employers-forum.co.uk</a></p> |
| <p><b>Stonewall equality and justice for lesbians, gay men and bisexuals</b><br/>Tower Building<br/>York Road<br/>London<br/>SE1 7NX<br/>Telephone: 020 7593 1850<br/>Fax: 020 7593 1877<br/><a href="http://www.stonewall.org.uk/">http://www.stonewall.org.uk/</a></p>   | <p><b>Opportunity Now inclusive workplaces for women</b><br/>137 Shepherdess Walk<br/>London<br/>N1 7RQ<br/>Tel: 0870 600 2482<br/>Fax: 020 7253 1877</p>   |

**Appendix 1**  
**Diversity Questionnaire**

Tenderers are required to answer the following questions as part of the tender response by ticking either Yes or No.

**1. Does the organisation have an Equal opportunities Policy?**

|     |  |    |  |
|-----|--|----|--|
| Yes |  | No |  |
|-----|--|----|--|

If Yes, please provide a copy of the policy.

If No, then tender disqualification will not occur, but it is advised that a policy be developed and implemented. Please state how you can demonstrate that you comply with relevant equality legislation. Then go to question 3.

**2. Is your policy on Equal Opportunities set out in the following?**

- i) In instructions to those concerned with recruitment, training or promotion of employees?

|     |  |    |  |
|-----|--|----|--|
| Yes |  | No |  |
|-----|--|----|--|

If Yes, please provide details.

- ii) In documents available to employees, recognised Trade Unions or other employee representative groups?

|     |  |    |  |
|-----|--|----|--|
| Yes |  | No |  |
|-----|--|----|--|

If Yes, please provide details.

- iii) In recruitment advertisements or other literature?

|     |  |    |  |
|-----|--|----|--|
| Yes |  | No |  |
|-----|--|----|--|

If Yes, please provide a copy of a recent recruitment advertisement.

**3. All organisations are required to comply with all relevant statutory regulations relating to the treatment of all. Therefore does your organisation ensure equality is demonstrated irrespective to recruitment, training and promotion?\***

|     |  |    |  |
|-----|--|----|--|
| Yes |  | No |  |
|-----|--|----|--|



**4. In the last three years has any court or tribunal found a case of unlawful discrimination against your organisation? \***

Enforcement action will not disbar your organisation from inclusion, but failure to disclose the information will.

|     |  |    |  |
|-----|--|----|--|
| Yes |  | No |  |
|-----|--|----|--|

If Yes, please provide a copy of the actions taken to ensure a recurrence of this discrimination will not take place.

**5. In the last three years has your organisation been the subject of a formal investigation by the Commission of Racial Equality, the Disability Rights Commission or the Equal Opportunities Commission on grounds of alleged unlawful discrimination? \***

Investigation will not disbar your organisation from inclusion, but failure to disclose the information will.

|     |  |    |  |
|-----|--|----|--|
| Yes |  | No |  |
|-----|--|----|--|

If Yes, please provide a copy of the actions taken to ensure a recurrence will not take place

***If no proceed to Question 7***

**6. How many cases of formal investigation have been undertaken involving your organisation?**

|                                 |  |
|---------------------------------|--|
| Number of formal investigations |  |
|---------------------------------|--|

**7. Within the last three years how many cases of unlawful discrimination have been awarded against your organisation?**

|  |  |
|--|--|
| Number of unlawful discrimination awards |  |
|--|--|

**8. Does the organisation observe, as far as possible, the Commission for Racial Equality's Code of Practice for Employment, the Disability Rights Commission's Employment and Occupation Code of Practice and the Equal Opportunities Commission's Code of Practice which provide practical guidance to employers, and others, on the elimination of discrimination and the promotion of equalities/fairness in employment and training?**

|     |  |    |  |
|-----|--|----|--|
| Yes |  | No |  |
|-----|--|----|--|

The Council will take responses to this questionnaire into account in the evaluation process. It is not a legal requirement for a Tenderer to answer 'yes' to all of the questions before they will be considered for selection.

\* Greater importance will be given to the answers received to Questions 3, 4 and 5.

**Appendix 3**  
Equality Compliance Questionnaire for Current  
Contractors

## Questionnaire for Monitoring of Diversity Considerations

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|---|
| <p><u>Name of Company:</u></p> <p><u>Address:</u></p> |
|---|

This questionnaire forms part of Kent County Council's monitoring process for service providers. It is used to ensure that diversity compliance is maintained throughout the length of the contract. Please answer the following questions to help Kent County Council assess this, and supply a copy of your up-to-date Equal Opportunities policy.

1. Do you treat acts of racial discrimination, harassment and victimization as a disciplinary offence? If so, please supply any relevant evidence such as written instructions to employees.

Yes

No

2. Who is responsible for the management and control of your Equal Opportunities policy?

Name: \_\_\_\_\_

Position: \_\_\_\_\_

3. How do you communicate this equal opportunities policy to your staff?  
(Please tick all relevant boxes)

|                        |                          |
|------------------------|--------------------------|
| Induction              | <input type="checkbox"/> |
| Notice Board           | <input type="checkbox"/> |
| Staff Meeting          | <input type="checkbox"/> |
| Issue to Staff         | <input type="checkbox"/> |
| Other (please specify) | <input type="checkbox"/> |

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4. When your firm recruits, how does it do so?

Through friends or relatives

Press (please supply a copy of any job advertisement appropriate)

- National
- Local
- Minority
- Job Centre
- Careers Service
- Other (please specify)

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5. When recruiting do you shortlist, test and interview candidates using objectives criteria and selection methods for the job?

Yes  No

(Please supply any relevant evidence)

6. Do you:

i) Inform candidates of your equal opportunities policy?

Yes  No

ii) Record Age, Disability, Gender reassignment, Race, Religion & Belief, and Sex at the application stage?

Yes  No

*( If yes in either case please supply documentary evidence)*

7. What training in the Equal Act 2010 is given to staff responsible for recruitment, selection and training?

*(Please supply details below)*

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8. How do check that your Equal Opportunities policy is working in practice?

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9. What action do you take in order to attract employees with protected characteristics ?

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Return to:

Strategic Procurement  
Kent County Council  
Room 3:06  
Sessions House  
Maidstone  
Kent  
ME14 1XQ