



EQUALITY IN PROCUREMENT **A GUIDE FOR SUPPLIERS AND CONTRACTORS**

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Introduction

Newcastle-under-Lyme Borough Council is committed to promoting equality and tackling discrimination.

The Council has a duty to provide services that:-

- a) support local diversity;
- b) do not lead to unfair discrimination or social exclusion; and
- c) demonstrate Best Value.

The Council's spending on goods, supplies and services contributes significantly to the local and regional economy and the people of our area have the right to expect that this spending will encourage and ensure equal opportunities.

The Council has an Equality Policy that is available on our website at www.newcastle-staffs.gov.uk.

Part of this policy covers how we will handle equality matters in our dealings with organisations (firms, companies or other bodies) that tender or apply to us to be considered for the award of our contracts, whether for goods, services or works.

Winning Public Sector Contracts

Access to contracts within the public sector offers huge opportunities and revenue to businesses.

Public authorities are now subject to legislation that obliges them to:

- a) eliminate unlawful discrimination; and
- b) promote equality of opportunity;

which impacts upon how this Council does business. This Council will not award contracts to businesses that have a history of discrimination in employment or service delivery.

Public authorities also have a duty to serve the entire community they are located in, and, as such, it is reasonable that they expect organisations with whom they do business to promote equal opportunities within their businesses. Increasingly, public authorities are asking businesses to demonstrate good equality policies and practice within their organisations.

This guide is intended to set out how the Council carries out its procurements from the perspective of equalities, and how the Council meets its equality obligations when procuring goods, services and works.

Appendix 2 contains details of other organisations who provide guidance on equality issues.

If you want any further information on equality and procurement, please telephone Jane Sheldon on 01782 742753 or e-mail on: jane.sheldon@newcastle-staffs.gov.uk.

Your feedback on this Guide would be welcome.

1. Our Corporate Priorities

- 1.1 Create a Cleaner, safer and sustainable Borough:
We aim to improve the environment so that everyone can enjoy a safe, sustainable and healthy Borough and enhanced quality of life.
- 1.2 Create a Borough of opportunity:
We will work with our partners to maximise investment in employment generate activities that will create opportunities for improving the wealth and prosperity of the Borough's residents.
- 1.3 Create a Healthy and Active Community:
We will work with partners to ensure the residents and visitors are able to access a range of facilities and activities that will enable them to improve their health and quality of life.
- 1.4 Transforming our Council to Achieve Excellence:
We will create the maximum positive effect on the quality of life for the communities of Newcastle,
We achieve this through the delivery of excellent services that the public want and need and deliver them in the most effective and efficient way possible with the resources we have at our disposal.

We believe that practical action on equal opportunities will help us achieve these priorities because greater equality will mean we can better address the needs of all communities.

We will pursue this through continuous improvement in the way we:

- a) provide services;
- b) recruit and support our employees;
- c) work with other organisations (including those who want to do business with us); and
- d) involve communities.

We are making equality a mainstream part of our work, by ensuring that all aspects of what we do, our policies, plans and procedures, reflect and incorporate equality objectives, as appropriate.

We want to deliver services throughout the Borough without discrimination and will make sure that, wherever possible, organisations that provide services to us or on our behalf, or with funding from us, adopt the same approach to equality.

We will also take equality issues into account, as lawful and appropriate, at all stages of our procurement processes.

2. Competing for our Contracts

The Council has to follow the requirements of European and UK procurement legislation and its own internal Financial Regulations when procuring goods, services or works. Accordingly, if your organisation wants to win work from the Council, you will need to be aware of our Equality Policy and to comply with all the relevant legislation on equalities (a brief summary of which is set out in Appendix 1 later in this Guide).

2.1 Contractor Evaluation

For all our procurements, we will follow certain steps to ensure that equality issues are considered early in the process, and are given due importance in the tender and contract documentation that we use.

When competing for work from the Council you will be invited to complete:

- a Tender Pack (used when you are tendering for a contract either above or below the OJEU thresholds and as part of an open procedure); or
- a Pre-Qualification Questionnaire (PQQ) (used when you are tendering as part of a restricted procurement procedure for a contract either above or below the OJEU threshold).

It is essential that you answer all questions as fully as possible and that you ensure that your policy and procedures meet the Council's requirements. Once received, we will review the financial, technical, quality, health and safety, environmental and equality information you have supplied within this document. If you do not meet the Council's requirements we will, if possible, advise you how to bring your policy and procedures up to the required standard. Further information on developing an equal opportunities policy is set out on pages 9 and 10.

Section 18 of the Local Government Act 1988 allows the Council to ask firms who are applying to do business with it, six "approved questions" relating to race relations and to use the answers in its selection process. An example of such questions include:

- a) what you do to avoid unlawful race discrimination; and
- b) how you promote equal opportunities within your organisation.

When you send us your answers to these six questions, we will assess them using a standard methodology, to ensure fairness in how we treat you. If you do not meet the standards we need, we will contact you and ask you to explain your answers. We can also offer guidance on how you can meet our standards, following which we may reassess you.

2.2 Tender Evaluation

Our tender evaluation processes are tailored to the needs of each procurement. For most contracts the tender evaluation will take many different aspects into account, including your response to specific equality related questions such as:

- a) How you promote equal opportunities in connection with:
 - i) employment policies, practices and procedures; and
 - ii) delivering a service to all sections of the community, including women, disabled people and black and minority ethnic communities.
- b) How you meet your obligations under the relevant equal opportunities legislation.
- c) How you inform your employees about responsibilities in accordance with relevant equal opportunities legislation.

We will also take into consideration whether or not you are prepared to accept the contract terms we have put forward on equality matters, where these are relevant to the contract in question.

When tendering for work from the Council, you should, as a suggested minimum:

- a) Make sure your written policies on equality are clear, up to date and cover all aspects of your operations.
- b) Make sure you have all the information you need about the procurement, so you can consider how you will respond. Make sure you understand how the tenders will be evaluated.
- c) Make sure you answer fully any questions on equality that are in the procurement documentation, and supply copies of your policies if requested.
- d) In tenders, it would be helpful if you can back these policies up with positive examples that are relevant to the contract in question and that show how equality matters are really embedded in your organisation, and not just in policy documents.

e) If you are successful in getting the contract, make sure you are geared up to meet your obligations, including those on equality matters, and monitor your own performance going forward.

f) Do you need to give your staff any specific training before the contract starts?

g) Bear in mind that we will be monitoring your performance of the contract throughout the contract term. Make sure you answer any questions we ask about your performance, including on equality matters.

h) Remember that other authorities may approach us about your performance on our contract, particularly if you put us forward as a referee on other tenders.

3. Post-Contract Monitoring

After we have awarded you a contract and it is signed, we will monitor your performance under the contract to make sure you continue to meet our requirements. This includes whether you are following our equality requirements.

We can monitor you by:-

a) sending you a questionnaire to complete and return to us, and/or

b) arranging site visits to see how you are meeting our requirements in practice, and/or

c) asking you to provide information that demonstrates your compliance with any specific equality clause in your contract with us, and/or

d) asking you to give us monitoring information about your workforce, for example the number of employees who are women or who are from black and minority ethnic backgrounds.

We will require you to inform us of all findings made against you in an employment tribunal in relation to discrimination on the grounds of sex, disability, race, sexual orientation, religion or belief or age.

We will monitor firms who have been found guilty of discrimination by an employment tribunal or any other forum in relation to breaches of equal opportunity legislation and require them to provide us with details of the matters in question, and what they are doing to address the matter.

If post-contract monitoring identifies areas for improvement in your approach to equality we will, where possible, offer guidance.

4. Good Practice Guidelines

The Economic Case for Equality

You are already subject to legislation on equal opportunities – see Appendix 1 for some further information.

Often businesses still do not consider that equality is relevant to their operations. Equality may be simply seen as an issue for Human Resources (HR) departments, rather than an integral part of overall business performance. Businesses are often unaware of the benefits a more diverse workforce can bring, and do not connect equality strategies to overall business objectives.

Businesses operate in an ever-changing market, and those that embed equality policies within their business strategies can gain a competitive advantage over firms that have poor or non-existent equality and diversity practices.

Good equality practices can help businesses achieve key performance targets such as:

- a) Business growth through attracting new customers and markets, and lucrative public sector contracts;
- b) Improved productivity through tackling skills weaknesses and shortages;
- c) Targeted provision through better recognition of your customer's needs and aspirations; and
- d) Reduced exposure to risk by reducing the number of employment tribunal cases brought against you, fines awarded and negative publicity.

Some Suggested Guidance Points

These are guidance points only, and you should seek further information about each of the areas listed below. Some employers in smaller organisations may not need detailed procedures, such as some of those recommended below. The guidance points may therefore need to be adapted occasionally, to suit an organisation's individual circumstances. However, smaller organisations should make sure their policies and practices are consistent with equal opportunities legislation and that they follow the general spirit of this guidance.

- a) Develop an equal opportunities policy. The policy should:
 - contain a statement of your organisation's commitment to equal opportunities

- require all employees to respect and act in accordance with the policy
- identify a senior employee who is responsible for the policy
- include a procedure for dealing with complaints of discrimination
- cover recruitment, promotion and training
- explain how you will implement, monitor and review the policy
- be communicated to all staff

Further information on developing an equal opportunities policy is available on the Commission for Racial Equality's website. See appendix 2.

b) Examine your existing policies and practices to identify barriers to equal opportunities. Set an action plan for your organisation, with clear targets, so that you and your staff have a clear idea of what you want to achieve and by when.

c) Monitor your progress in achieving your targets and the objectives of your equal opportunities policy.

d) Provide training for all people, including managers, throughout your organisation, to ensure they understand the importance of equal opportunities. Provide additional training for staff who recruit, select and train your employees.

e) Make sure you collect, store and analyse the data that will help you to monitor your workforce and your progress.

f) Review recruitment, selection, promotion and training procedures regularly, to ensure that you are delivering on your policy.

g) Draw up clear and justifiable job criteria, which are demonstrably objective and job related.

h) Offer pre-employment training, where appropriate, to prepare potential job applicants for selection tests and interviews. You should also consider positive action training aimed at groups which are underrepresented in your workforce.

i) Consider your organisation's image: do you encourage applications from under represented groups and feature these groups (for example women, black and minority ethnic people and disabled people) in your recruitment literature, or could you be seen as an employer who is indifferent to these groups?

j) Consider flexible working, career breaks, providing childcare facilities, and so on, to help women in particular meet domestic responsibilities and pursue their occupations.

- k) Consider making changes to working practices and the physical features of your premises in response to the needs of disabled people.
- l) Develop links with local community groups, organisations and schools, in order to reach a wider pool of potential applicants.
- m) Always remember to follow equality legislation in your employment practices, and all areas of your operations, including the performance of works, the supply of goods and the performance of services.
- n) Do not allow offensive behaviour and language on any of your premises or sites.
- o) Consider access issues for people in the area of construction or delivery sites (e.g. wheelchairs, prams etc).
- p) Have respectful and safe standards of dress for your staff.
- q) Have care and consideration for members of the public at all times.

APPENDIX 1 – BRIEF GUIDE TO LEGISLATION

The Local Government Act 1988

The Local Government Act 1988 controls the way local authorities manage their tendering procedures for all contracts for goods, works and services.

The Local Government Act 1999

The Local Government Act 1999 was mainly drafted to help create the legislation for Best Value and modernising local government. Section 19 of this Act gives the Secretary of State the power to change part or all of section 17 of the Local Government Act 1988. Section 17 of the Local Government Act 1988 prohibited local authorities from taking into consideration certain workforce-related issues, these section 17 provisions have now been relaxed by the Secretary of State in accordance with powers under section 19. (Local Government Best Value (Exclusion of Non-commercial Considerations) Order 2001 (SI 2001/909))

The Law tackles unfair discrimination on six grounds:-

- SEX DISCRIMINATION
- DISABILITY DISCRIMINATION
- RACE DISCRIMINATION
- SEXUAL ORIENTATION
- RELIGION OR BELIEF
- AGE DISCRIMINATION

A brief guide on these areas of legislation is set out below. Please do not rely on this summary to be completely accurate or complete. Please make sure you check what the law says and how it affects your organisation and take professional advice as appropriate for you.

A. In connection with employment, provision of goods, facilities and services or premises

1. Sex Discrimination

Legislation here is:-

- **Equal Pay Act (1970) (as amended)**
This Act gives an individual the right to the same contractual pay and benefits as a person of the opposite sex in the same employment, and applies to pay and other contractual matters where a woman and a man are doing the same work or work that is of equal value.

- **Sex Discrimination Act (1975) (as amended)**
This Act was introduced in 1975 and changed in 1986. It makes it unlawful to discriminate on the grounds of someone's sex. It is also against the law to discriminate because someone is married. It covers direct and indirect discrimination.
- **Equal Treatment Directive (Amendment) Regulations (2002)**
These provide a definition of harassment (including both sexual and sex-based harassment), and expressly prohibit it.
- **Sex Discrimination (Gender Reassignment) Regulations (1999)**
These provide equality of opportunity for the transsexual community in the areas of pay, employment, self-employment and vocational training. Gender recognition means that transsexual people must be treated as being of their new sex for all legal purposes, including in the workplace.
A guide is available from the Department for Education and Skills to help you follow these Regulations, and covers good practice in the workplace (www.dfes.gov.uk)

2. Disability Discrimination

Legislation here is: -

- **Disability Discrimination Act ("DDA") (1995)**
This Act makes it against the law for an employer or service provider to discriminate against a disabled person by treating them less favourably than another person, for a reason that relates to disability. There can also be discrimination if an employer or service provider fails to make reasonable adjustments or changes in relation to a disabled person.
- **Disability Discrimination (Amendment) Act (2005)**
This will become law in 2006. It makes a number of important changes to the DDA. It places a duty on public bodies to promote equality of opportunity for disabled people in a similar way to the duties under the RRA. These duties will also apply to any public function that is contracted out to external organisations to deliver. The Council may include specific clauses within contracts to help us to meet this duty.

3. Race Discrimination

Legislation here is:-

- **Race Relations Act ("RRA") (1976)**
 - This Act makes it against the law to discriminate against anyone because of their race, colour, nationality (including citizenship), or ethnic or national origins.
 - It applies to all employers, large or small.
 - It requires employers to prevent direct and indirect discrimination and victimisation in employment.
 - The Act makes racial discrimination against the law in - recruitment and appointment; terms of employment; access to training opportunities; transfer and

promotion; access to benefits, facilities and services; discipline and dismissal. It makes it unlawful to display a notice or advert that shows an intention to discriminate, or to tell others to discriminate.

- Under the Act, Local Authorities must ensure that they tackle racial discrimination and promote racial equality.

- **Race Relations (Amendment) Act (2000)**

- This Act was introduced to extend the RRA to cover public functions, the police and public duties.
- It places a positive obligation on public authorities to actively promote race equality. The Council may include specific clauses within contracts to help us to meet this duty.

- **Race Relations (Amendment) Regulations (2003)**

The Commission for Racial Equality publishes codes of practice that may be of assistance. The Code of Practice on Employment can be found on their website www.cre.gov.uk.

B. In connection with employment & occupation related matters only

4. Sexual Orientation

Legislation here is:-

- **Employment Equality (Sexual Orientation) Regulations (2003)**

These make it unlawful to discriminate (directly or indirectly) on grounds of sexual orientation. It means that lesbians, gay men and bisexual people are entitled to protection similar to those already provided for women, disabled and black & ethnic minority staff.

5. Religion or Belief

Legislation here is:-

- **Employment Equality (Religion or Belief) Regulations (2003)**

These make it unlawful to discriminate (directly or indirectly) against workers because of their religion, religious or similar philosophical belief.

6. Age

Legislation here is:-

- **Employment Equality (Age) Regulations (2006)**

- set a default retirement age of 65, but also create a right for employees to request working beyond a compulsory retirement age, which employers will have a duty to consider;
- ensure close monitoring of the retirement age provisions so a formal review can take place five years from implementation;

- allows employers to objectively justify earlier retirement ages if they can show it is appropriate and necessary.

APPENDIX 2

Other sources of advice and guidance

The Commission for Racial Equality (CRE)'s website www.cre.gov.uk provides guidance including:

- A Statutory Code of Practice on Racial Equality in Employment
<http://www.cre.gov.uk>
- A sample equal opportunities policy
<http://www.cre.gov.uk>
- Advice for small businesses
<http://www.cre.gov.uk>

The Disability Rights Commission's website www.drc-gb.org provides:

- a practical guide to the law on disability
- guidance for small businesses
<http://www.drc-gb.org/employers>

The Equal Opportunities Commission's website www.eoc.org.uk includes:

- guidelines for employers
- advice for small businesses
<http://www.eoc.org.uk/Default.aspx?page=15420>