

# **Equalities in Procurement**

## **Policy and Guidance for Contractors and Council Officers**

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## Equalities in Procurement Policy

Coventry City Council will extend its legal obligations under all Equalities Legislation to its partners and contractors who are delivering goods, services and works on behalf of the Council.

In doing so it will:

1. include in all contracts a requirement to comply with all legislation, official guidance and codes of practice relating to equal opportunities and human rights, including but without limitation to those relating to age, disability, gender, race, religion and belief; sexual orientation; work and families.
2. through contract specifications and specific contractor obligations ensure that, where contractors provide works and services on behalf of the Council, the contract meets the requirements of the Council's Equalities policies, regulations and objectives and through ongoing contract management ensure compliance.
3. ensure that its partners and contractors supply reports on service delivery and take-up, making sure that contracts are monitored in line with the Council's equality monitoring processes and targets.
4. assess partners and contractors for their ability to meet the Common Standard for Equalities in Procurement where performance of the contract is considered to have a considerable impact on the equalities legislation, regulations and objectives.

# Equalities in Procurement Guidance

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## 1. Overview

This document incorporates:

- A statement of the Council's Equalities in Procurement Policy
- Guidance for Council officers on how to promote equalities and diversity when procuring goods, works, and services from external contractors, providers and suppliers.
- Guidance for Contractors, Providers and Suppliers on how the Council's policy will affect the procurement process.

**The Council believes that:**

- everybody should have an equal opportunity to contribute to and benefit from society.
- a diverse community is a positive asset to the City.

Extract from Coventry City Council's Equal Opportunities Policy

The Equalities in Procurement Policy supports the City Council's Equality Strategy, which brings together all the City Council's equalities policies and activities in one place and is designed to ensure a consistent approach across the authority to all areas of equalities work

## 2. Why Equality and Diversity in Procurement?

This policy supports the City Council's Equality Strategy, which brings together all the Council's equalities policies and activities in one place and is designed to ensure a consistent approach across the authority to all areas of equalities work.

It is an important part of this work to ensure the Council is encouraging and, where appropriate, requiring companies and other organisations which bid for Council business to practice and promote equalities in employment and service delivery.

### 3. The role of procurement in promoting Equalities and Valuing Diversity

The Council provides a wide range of services to residents and businesses in the City. In some cases these are provided directly by the Council, in others by our contractors and partners.

Each year, the Council enters into contracts worth many millions of pounds for buying goods, works and services on behalf of the people of Coventry. Whether provided by the Council or by external organisations it will not discriminate on the grounds of disability or impairment, employment status, gender, gender reassignment, home address, marital status, nationality, national origin, race, religious belief, responsibility for dependants, sexual orientation or trade union membership.

The Council has a statutory duty to ensure that public money is spent in a way that ensures Value for Money and does not lead to unfair discrimination and social exclusion.

The promotion of equalities in the procurement process will help the Council to:

- Obtain value for money for the Council and improve the quality of local authority services
- Ensure that public money is not spent on practices which lead to unfair discrimination
- Create a diverse and integrated workforce
- Deliver more responsive and flexible services in combating social exclusion and building strong and cohesive communities
- Encourage other organisations to practice the Council's public service ethos on equalities.
- Deliver services that meet the needs of residents of the City
- Improve employment conditions

### 4. Legal Background

#### Acts of Parliament (as amended)

- Equal Pay Act 1970
- Sex Discrimination Act 1975
- Race Relations Act 1976
- Disability Discrimination Act 1995
- Human Rights Act 1998
- Race Relations (Amendment) Act 2000
- Civil Partnership Act 2004
- Disability Discrimination Act 2005
- Equality Act 2006 (Including Gender Duties)

#### The Regulations

- Sex Discrimination (Gender Reassignment) Regulations 1999
- Race Relations Act 1976 (Amendment) Regulations 2003
- Equal Pay Act (EPA) 1970 (Amendment) Regulations 2003
- Employment Equality (Sexual Orientation) Regulations 2003
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Sex Discrimination) Regulations 2005
- Employment Equality (Age) Regulations 2006

## 5. What the Council will do in procuring goods, services and works

The Council will take into account in its tender evaluation and contracting processes, a potential contractor's approach to equalities in terms of its employment practices and service delivery. It will do this by asking potential contractors 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 procurement with regard to the promotion of equalities within service delivery and employment opportunities will also be monitored and managed during the life of each contract. The Council's contracting officers will follow the checklists in **Appendix A and B** to ensure that these principles are observed.

## 6. What contractors and suppliers can do

**Appendix E** details the procurement process from a contractor's point of view, taking into account equalities considerations which will be applied by the Council.

**Appendix F** provides guidance on writing equalities policies and the questions contractor may be asked

## 7. Process for checking contractors compliance

Equalities is a core requirement of a contract where services are provided directly to the public or where indirectly or directly the Council has a duty to promote equalities.

The Council will check a contractor's compliance with equalities issues in two ways:

- **Prior to Contract Award** - by asking the equalities questions listed in Appendix G and requiring documentary evidence to support the answers. If the answers and evidence do not, after evaluation, satisfy the West Midlands Common Standard for Equalities in Public Procurement, the contractor may not be granted entry onto a tender shortlist or awarded a contract.
- **After Contract Award** - by including contract conditions on equality in all Council contracts and by monitoring a contractor's performance and compliance with those conditions following the Council's Equalities Monitoring Guidance.

## When to include equalities in procurement projects

### 1. Guiding principles

- **Mainstreaming** Equality should be directly related to corporate objectives, planning, and service provision
- **Relevance** Where there is potential for a contract to have an improved impact on equalities it becomes your duty to promote equalities through the procurement. Consider all elements of the contract, not just those which are most obvious.
- **Proportionality** The actions you take to ensure equality should relate to the likely impact, and size, of the contract. You cannot ignore smaller contracts, but simpler procedures may be more appropriate.
- **Risk assessment and accountability** .The more relevant the contract is to the Councils duty to promote equalities, the more risk there will be in not acting. Some risk can be transferred to contractors, but responsibility stays with the Council.

### 2. All procurement processes and contracts must include:

#### 2.1 The Council's Standard Clause for Equality and Human Rights - Appendix C

and

#### 2.2. When equality is not a core requirement:

A Self declaration signed by the tenderer confirming compliance with equality legislation and this must be re-affirmed in contract formation – Appendix D

#### 2.3 When equality is a core requirement :

A set of questions designed to assess a potential contractor's compliance with equalities legislation and deliver goods, services and works in a way that addresses equality issues. – Appendix F.

The questions can be used in pre-qualification or in tender documentation and should be used as evaluation criteria and weighted accordingly. Additional questions can be added that are relevant to the subject matter of a particular contract. In some instances questions may represent a minimum standard below which potential contractors will not be considered; in others they may be scored to reflect relative levels of impact on equalities issues. The criteria used to evaluation answers to the questions must be provided at the same time as the questions.

### 3. When is equality a core requirement in a contract?

The following five questions (based on Commission for Racial Equality Guidance now the Equalities and Human Rights Commission) will help determine whether equality is a core requirement in any contract for goods, works, or services.

1. What is to be provided under the contract?
2. Is the purpose of the contract to provide services directly to the public?
3. Is the provision of goods, works, or services in question likely to affect, directly or indirectly, your ability to meet the duty to promote equality?
4. If the answer to either 2 or 3 is yes,  
Is it necessary to include requirements for promoting equality in the contract, to make sure we meet the duty?
5. If the answer to 4 is yes,  
What equality requirements are appropriate for the contract in question?  
This may be determined by Equalities Impact Assessment tools and determining whether Equalities are "core" to delivery of the contract

## **4. Goods and Works not just Services**

While equality is more likely to be relevant to contracts for services, we should not assume that it will not be relevant to contracts for goods or works. Please note the Disability Discrimination Act covers the provision of goods as well as services.

### **4.1 Contracts for Services**

Equality is a core requirement when it is an essential part of the contract and relevant to your duty to promote when:

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

### **4.2 Contracts for goods**

1. Our primary concern is likely to be that the goods are 'fit for purpose' and that they meet quality standards.
2. In certain contracts, to be fit for purpose, it will be a core requirement that the goods should be capable of meeting the needs of particular groups e.g. people with a disability.
3. We shall not provide goods on less favourable terms, e.g. to people with a disability.

### **4.3 Contracts for works**

1. You should be asking the five questions in section 3 above which determine whether equality is core to the requirement.
2. In contracts for works, the conduct of a contractor's employees towards Council staff and towards members of the public is relevant to the duty.
3. Works must comply with the Disability Discrimination Act on ensuring access for disabled people.



## Checklist for Council Officers: Procurement Cycle

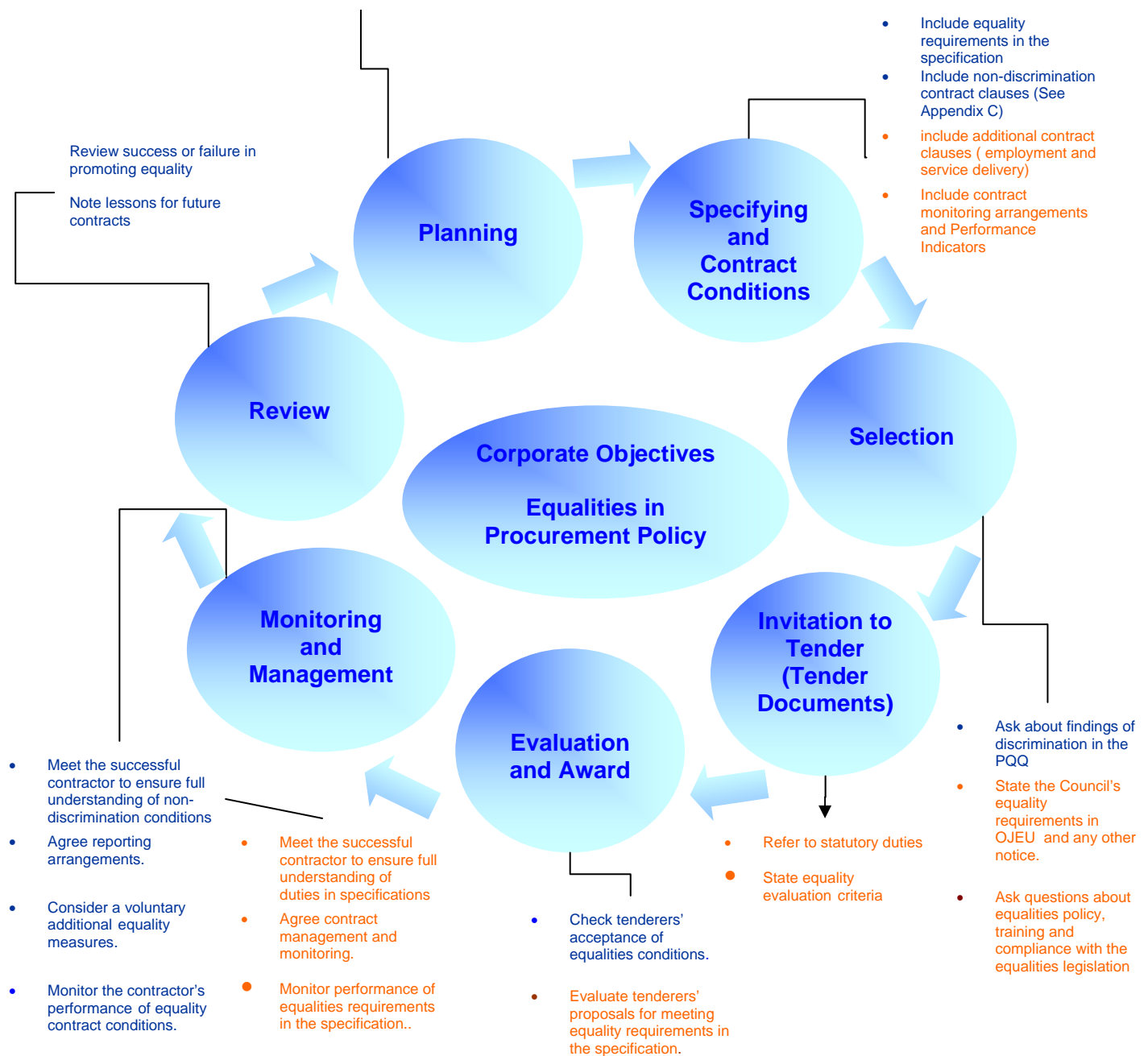
Steps to take in all contracts	Additional steps to take when equality is a core requirement
Determine who will be responsible for evaluating equality elements at each stage.	
<b>PLANNING</b> Determine whether equality is a core requirement of the proposed contract. – Appendix A  Ensure that staff responsible for drawing up specifications and contract conditions understand the requirements of equalities in procurement.	Review the equality impact of the Council's current arrangements.(use Corporate Equalities Impact Assessment guidance)  Consult internally and externally on how better to meet the duty to promote equality.
<b>DRAFTING SPECIFICATIONS</b>	Include equality requirements in the specification
<b>DRAFTING CONTRACT CONDITIONS</b> Include non-discrimination contract clauses (See Appendix C)	Where relevant, include additional contract clauses on equality in employment and service delivery.  Ensure that contract monitoring arrangements and Performance Indicators are included in contract conditions
<b>SELECTING TENDERERS</b> Ask about findings of discrimination in employment and service delivery and any action taken as a result in the pre-qualification questionnaire.	State the Council's equality requirements in OJEU (Official Journal of the European Union) and any other notice.  Where relevant, ask questions about equalities policy, training and compliance with the equalities legislation
<b>INVITATION TO TENDER (Tender Documentation)</b>	Refer to the relevant statutory duties in Equalities Legislation and state equality evaluation criteria in the invitation to tender.
<b>EVALUATING TENDERS</b> Check tenderers' acceptance of equalities contract conditions.	Evaluate tenderers' proposals for meeting equality requirements in the specification.
<b>MANAGING AND MONITORING CONTRACTS</b> Meet the successful contractor to ensure full understanding of non-discrimination conditions and agree reporting arrangements.  Consider a voluntary agreement with the contractor for additional equality measures.  Monitor the contractor's performance of equality contract conditions.  Where equalities performance is inadequate, invoke default provisions or warn the Contractor that they may not be considered for future contracts.	Meet the successful contractor to ensure full understanding of the Council's equalities duties and requirements in contract specifications and to agree contract management and monitoring.  Monitor the contractor's performance of equalities requirements in the specification e.g. accessibility for the disabled.

# Equalities in the Procurement Cycle

## Steps to take in all contracts

### Additional steps to take when equality is a core requirement

- Is equality a core requirement? Appendix A
- Does everyone understand the requirements of equalities legislation?
- What is the equality impact of current arrangements.? (use Corporate EIA guidance)
- Consult internally and externally on how to meet the duty to promote equality.



### Coventry Council's Standard Clause

#### ***Equalities and Human Rights***

The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, the Sex Discrimination Act 1975, Disability Discrimination Act or any statutory modification or re-enactment of those acts relating to discrimination in employment or in delivery of the Services.

The Contractor shall take all reasonable steps to ensure that all servants, employees or agents of the Contractor and all sub-contractors employed in the performance of the Services do not unlawfully discriminate as set out in this clause.

The Contractor must promote equal opportunities in all activities covered by this agreement and have, and actively demonstrate a written equal opportunities policy statement. The Contractor must make the policy statement available to the Council when it is requested in writing. The Contractor must put into effect any provision which it may agree with the Council relating to equal opportunities and comply with all statutory duties and legislation relating to equal opportunities.

The Contractor shall provide such information as the Council may reasonably request for the purpose of assessing the Contractor's compliance with this clause.

## Equalities Self Declaration

The Council is a member of the West Midlands Forum that operates a Common Standard for Equalities in Public Procurement. Other members include Birmingham, Redditch, Sandwell, Walsall and Wolverhampton Councils.

The Forum promotes equality for all: across age, disability, gender, race, religion and sexual orientation. Contractors must complete the following declaration of intent to comply with all legislation, official guidance and codes of practice relating to equal opportunities, including but not limited to the following legislation and regulations:

### Acts of Parliament

- Equal Pay Act 1970
- Sex Discrimination Act 1975
- Race Relations Act 1976
- Disability Discrimination Act 1995
- Human Rights Act 1998
- Race Relations (Amendment) Act 2000
- Civil Partnership Act 2004
- Disability Discrimination Act 2005
- Equality Act 2006 (Including Gender Duties)

### The Regulations (As amended)

- Sex Discrimination (Gender Reassignment) Regulations 1999
- Race Relations Act 1976 (Amendment) Regulations 2003
- Equal Pay Act (EPA) 1970 (Amendment) Regulations 2003
- Employment Equality (Sexual Orientation) Regulations 2003
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Sex Discrimination) Regulations 2005
- Employment Equality (Age) Regulations 2006

Has your Equalities Policy already been approved by any local authority that is a member of the West Midlands Forum for Equalities in Procurement? ☐ Yes ☐ No

If no please complete, the following declaration

### Equal Opportunities Declaration

I confirm that we practice and abide all legislation, official guidance and codes of practice relating to equal opportunities.

Name.....

Position in Company .....

Date .....

# The Procurement Process for Contractors

## 1 ADVERTISEMENT

- Check whether equality is a core requirement
- Make sure you understand in broad terms what this means for you
- Check your equalities policy is up-to-date and covers employment and service delivery issues
- Check your equalities policy is compatible with the Council

## 2 SELECTION

- You may be asked if you have any history of discrimination: if a finding has been made against you, be honest and provide evidence to show how you have changed
- If you are asked further questions about equalities, provide full answers and supporting evidence

## 3 INVITED TO TENDER

### 3.1 NO - SEEK FEEDBACK ON EQUALITIES ELEMENTS

### 3.2 YES - INVITATION TO TENDER

- Make sure you are aware of the parts of the specification relating to compliance with Equalities Legislation
- Consider what you need to do to meet the requirements (e.g., you may need to train your staff)
- Check that you fully understand the contract conditions and confirm acceptance
- Use all the information provided by the Council (e.g., Equalities Policy and other data)
- Outline how you will fulfil all the elements of the contract

## 4 AWARDED CONTRACT

### 4.1 NO - SEEK FEEDBACK ON EQUALITIES ELEMENTS

### 4.2 YES - AFTER YOU HAVE BEEN AWARDED CONTRACT

- Meet the Council to discuss monitoring and managing the contract
- Make sure you understand exactly what is required of you
- Make sure you meet all the requirements of the contract and discuss any difficulties immediately
- Suggest additional voluntary ways of working with the authority

### Guidance for Contractors

When contracting with the public sector you may be asked to provide evidence of your equalities policies and practices along with other questions related to the particular goods, services or works you have to offer.

#### Writing an Equalities Policy

The Council is a member of the West Midlands Forum for Equalities in Procurement who provide guidance around writing an equalities policy together with some examples

<http://www.wolverhampton.gov.uk/business/opportunities/council/forum>

#### You will be asked to:

1. Sign a declaration confirming your compliance with equality legislation and this will be incorporated in your contract with the Council – Appendix D  
**or**
2. Where equalities are considered to be a core requirement (Appendix A) then you will be asked to complete a questionnaire. These questions will be asked in pre-qualification or in tender documentation and used as a means of evaluating your business as a potential contractor and/or the goods, services or works you can offer in terms of its impact on equality.

The Council will ask the questions in Section A, which are based on those approved by the Equalities in Human Rights Commission (EHRC) and the West Midlands Standard for Equalities in Procurement. You will be asked to submit evidence to support your answers. In addition you may be asked some of the questions in section B.

### Section A – Standard Questionnaire

1. Do you have a written equalities policy Yes ☐ No ☐

If yes, please send a copy and summarise the areas your policy covers below

If No, explain why

List any documents you have attaching as evidence

2. Is your equalities policy set out:
- a. In instructions to those concerned with recruitment, training and promotion?
  - b. In documents available to employees, recognized trade unions or other representative group of employees?
  - c. In recruitment advertisements or other literature? Yes ☐ No ☐

3. Is it your policy as an employer to comply with your statutory obligations to staff and applicants for employment under the Equality legislation or equivalent legislation in the countries in which your organisation employs staff?

Yes ☐ No ☐

4. Is in your practice not to discriminate directly or indirectly in breach of Equalities legislation

a. in relation to decisions to recruit, select, remunerate, train, transfer and promote employees?

Yes ☐ No ☐

b. in relation to performance of your contractual obligations whilst delivering goods, services and works?

Yes ☐ No ☐

5. In the last three years has any finding of unlawful discrimination or other breach of these laws been made against your organisation by any court or industrial tribunal?

Yes ☐ No ☐

6. In the last three years has your organisation been the subject of formal investigation by any of the Equalities and Human Rights Commission or similar body on grounds of alleged unlawful discrimination?

Yes ☐ No ☐

7. If you answered YES to question 5, or in relation to question 6 a commission made a finding adverse to your organisation, what steps did you take in consequence of that finding?

### Additional Questions

8. Do you carry out regular reviews of your equalities policies and practices?

Yes ☐ No ☐

If Yes, summarise below the frequency, procedures and implementation of findings.

List any documents you have attached as evidence

9. Are your staff with managerial responsibilities required to receive equalities training?

Yes ☐ No ☐

If Yes, summarise below

List any documents you have attached as evidence

10. Do you provide written instructions to managers and supervisors on equality in recruitment, selection, training, promotion, discipline and dismissal of employees?

Yes ☐ No ☐

If Yes, summarise below

List any documents you have attached as evidence

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

Yes ☐ No ☐

If Yes, summarise below

List any documents you have attached as evidence

12. Do you carry out regular reporting and consultation on equality issues within the workforce?

Yes ☐ No ☐

If Yes, summarise below

List any documents you have attached as evidence

13. Do you mention in the firm's recruitment advertisements and publicity literature that equal opportunities practices are in place.

Yes ☐ No ☐

If Yes, summarise below

List any documents you have attached as evidence

14. If you are not currently subject to UK employment law, please supply details of your experience in complying with equivalent legislation that is designed to eliminate discrimination (especially racial discrimination) and to promote equality of opportunity.

List any attached documents

**For Firms who Sub-Contract**

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

Yes ☐ No ☐

If Yes, summarise below

What do you ask sub-contractors to provide in evidence of their answers?

List any attached documents



### Other Information

16. Do you have any other details about your equalities policy 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?

List any attached documents.

17. Do you carry out regular monitoring of the numbers of job applicants from different gender, disability and ethnic groups

Yes ☐ No ☐

18. Do you carry out monitoring on the number of employees from different gender, disability and ethnic groups by grade when:

(a) in post Yes ☐ No ☐

(b) applying for posts Yes ☐ No ☐

(c) taking up training and development opportunities Yes ☐ No ☐

(d) promoted Yes ☐ No ☐

(e) transferred Yes ☐ No ☐

(f) disciplined and dismissed Yes ☐ No ☐

(g) leaving employment Yes ☐ No ☐

19. If monitoring reveals under-representation of the groups listed above outline what steps you to take, including positive action, to address any imbalances