

Diversity and Equality Requirements **Guidance for contractors**

Background

Diversity and equality is a prominent theme running through the Department for Work and Pensions (DWP) Departmental Strategic Objectives – the objectives that underpin our activities and define the nature of the Department. DWP also has a 'duty to promote' on equality and the Department needs to ensure that it actively promotes equality of opportunity for and good relations between all persons from the protected characteristic groups covered by the Equality Act: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

As a result of the above factors, DWP (and wider Government) need to consider equality when conducting their commercial activities – there is a real opportunity to make a difference by addressing equality issues professionally in the procurement process.

Legal requirements

As a public authority the Department, when delivering our services and carrying out our functions, must have 'due regard' to the three aims of the Equality Duty:

- eliminate unlawful direct or indirect discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

These requirements also apply to any function that is contracted out to external organisations to deliver on our behalf e.g. provision of training preparing people for work or provision of services delivered to DWP staff.

Contractors must recognise the responsibilities that DWP has and are required to comply with all equality legislation when delivering DWP contracts. Contractors are also expected to use all reasonable endeavours (to a level to meet the legislative requirements) to ensure that when procuring sub-contractors, they also cooperate with DWP in satisfying the requirements.

Contractors must recognise that, as a public authority, DWP must be proactive – DWP must not only deal with the consequences of discrimination, they must take all necessary steps to prevent discrimination happening in the first place and take the opportunity to actively promote equality.

All contractors and sub contractors must be aware of the DWP policy in this area – details can be found [here](#).

Contractor responsibilities

Contractor responsibilities around diversity and equality will vary depending on the nature of the contract and its delivery. Effectively, there are 3 'tiers' to equality responsibility, as detailed below.

Tier 1

Every organisation contracted to deliver a contract to DWP must as a minimum comply with all equality legislation.

Tier 2

Those delivering a service contract to DWP must understand that they must promote equality and if working on our premises, abide with DWP policies on diversity and equality and Standards of Behaviour.

Tier 3

Those delivering a service to customers on behalf of DWP or services to DWP staff must recognise that they inherit the 'duty to promote' equality. Their staff must acknowledge and behave as though they themselves were DWP employees. In effect a contractor must take on the responsibilities of a public authority – and must ensure that this is reflected in all the services that they deliver and in all their dealings with DWP's customers and staff. This includes monitoring the services which they are providing on behalf of the Department in terms of equality. For example, if the Department has a particular requirement to collect equality information of service users on a regular basis then the requirement will pass to any contractors delivering on behalf of the Department.

The Diversity and Equality Requirements schedule is the minimum requirement that applies to all contracts/contractors that fall into the 3 tiers above – in effect all DWP contracts. Those delivering services to customers or staff on behalf of DWP can expect some additional requirements (section 2.6 of schedule) and will find that diversity and equality elements and performance are prominent features in the service specification that they are contracted to deliver and the Key Performance Indicators (KPIs) that they are measured against.

Diversity and equality requirements

Overview of requirements

This guidance supports the requirements set out in the Diversity and Equality Requirements contract schedule. This schedule becomes mandatory for all new DWP contracts (with the exception of those under £10,000 in value, less than 6 months in duration or where subject matter is a stand alone/one off purchase) from 29th September 2009.

Broadly, the schedule requires that contractors:

- Acknowledge all relevant unlawful discrimination clauses in the terms of conditions of contract to which the schedule is attached
- Acknowledge that DWP has a 'duty to promote' equality – any must be seen to be actively promoting equal opportunities at all times
- Produce a Diversity and Equality Delivery Plan (in accordance with requirements) within 6 months of the contract start date
- Recognise that some contracts will require greater consideration of equality issues than others, in particular those delivering services on behalf of DWP, to customers and/or staff.
- Monitor and report the make up of their workforce in terms of gender, disability and ethnicity. Initial data to be submitted within 6 months of the contract start date and then annually thereafter.
- Demonstrate what actions have been taken/are planned to try and improve the workforce figures in these areas

What we are looking for

This section of the guidance details what contractors must do in order to satisfy the requirements of the schedule. However, only key headings and some examples are provided as this guidance can't be too prescriptive – contractors must develop and demonstrate policies and Diversity and Equality Delivery Plans that are tailor-made to their own organisation, reflecting its nature, size and resources.

This section follows the order and layout of the schedule and the relevant schedule section/paragraph is highlighted to make this guidance easy to follow and interpret.

Schedule section – 1) General

1.1

Contractors must acknowledge the 'duty to promote' equality that DWP has. This means that the Department must at all times be seen to be actively promoting equality of opportunity for, and good relations between, all persons from the protected characteristic groups covered by the Equality Act: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. Public bodies such as Government Departments, local authorities, NHS hospitals and social services all have a 'duty to promote' and all require their contractors to understand and acknowledge this duty.

1.2

Where possible, contractors must ensure that sub contractors also comply with the requirements of the schedule and acknowledge the 'duty to promote' that DWP has. It would be good practice for contractors to try and enforce the schedule requirements as far as possible down their supply chains, through

the contracting that they do with other organisations involved in contract delivery. However DWP will not require evidence of the requirements from any sub contractors, this is something that we would expect our contractors to manage themselves throughout their own supply chains (where possible).

Schedule section – 2) Compliance

2.1

This refers contractors back to the requirements of the unlawful discrimination clause in the standard terms and conditions of contract. The clause can be found in Section D of the DWP revised terms and conditions due to be issued during October 2009 (Statutory Obligations and Regulations) and requires contractors not to unlawfully discriminate on any grounds, as specified in equality legislation. Prior to the revised terms and conditions being issued the relevant clause can be found in (Unlawful Discrimination) in paragraph 20 for goods contracts and paragraph 37 for service contracts.

Appendix 1 gives a brief overview of the Equality Act 2010 which provides details of unlawful discrimination.

2.2

Contractors must produce a Diversity and Equality Delivery Plan within 6 months of the contract start date.

2.3

Contractors must provide workforce monitoring data within 6 months of the contract start date. Workforce monitoring data is data that relates to the make up of a workforce. Further details relating to this requirement are specified later in the schedule and a template for submitting data can be found in Appendix 3.

2.4

This section details how the Diversity and Equality Delivery Plan and workforce monitoring data will be agreed by the contractor and DWP. DWP will agree following submission providing all requirements have been met. If requirements have not been fully addressed then the issues will be raised with the contractor by the DWP contract manager. Once issues have been resolved and submissions agreed by the Authority, the contractor will then be required to formally review, revise and resubmit both their Diversity and Equality Delivery Plan and workforce monitoring data on an annual basis. Diversity and equality aspects will also be discussed jointly by the DWP contract manager and the contractor as a standing agenda item at contract review meetings. DWP can request sight of a Diversity and Equality Delivery Plan or workforce monitoring data at any time throughout the life of a contract.

Contractors should note that any cases of non compliance against the requirements will be handled using DWP standard contract management

procedures and in accordance with the termination on default provisions of the contract.

2.5

This section and its sub paragraphs detail what, as a minimum, a Diversity and Equality Delivery Plan must include. Some examples have been given against each paragraph and requirement however these are not exhaustive and contractors should ensure that they include as much relevant information as possible.

2.5(a) and 2.5(b) list the policy/policies and procedures that should be covered in the plan. Full documents are not required in the plan, an overview of the policy/policies in each area is sufficient. However, full documents must be made available to DWP on request.

2.5(c) requires contractors to provide details of how policies are (or will be) communicated within the contractors organisation. Some examples could include who communicates, who the audience are, how frequent the communications are and what media is used to communicate.

2.5(d) requires contractors to provide details of what general diversity and equality training has been (or will be – and by when) delivered to contractors staff. Some examples could be who training is delivered to, how often, an overview of the content of the training, method of training (face to face, electronic etc) and ongoing staff development following training.

2.5(e) requires contractors to provide details of what structure is in place (or will be in place – and by when) and what resources are (or will be – and by when) directed towards diversity and equality in the contractors organisation. Some examples could be details of any equality champions and their level in the organisation, commitment from CEO or equivalent, key roles with equality responsibilities and details of any financial budgets directed towards equality.

2.5(f) requires contractors to provide details of any diversity and equality cases and tribunals, including volumes and outcomes. It would also be appropriate to detail what (if any) remedial actions were identified as a result of the case/tribunal and the timescales associated with implementing the actions.

2.6 and sub paragraphs only relate to contracts where a contractor is delivering a service on behalf of DWP, to customers or to DWP staff.

Service specifications and Key Performance Indicators (KPIs) will clearly highlight instances where a contractor is delivering a service on behalf of DWP to customers or staff. Contractors should note that they will need to initially discuss the requirements of 2.6(a) i) (Equality Analysis) with DWP as the analysis should be done in conjunction with the Department.

Contractors should confirm that they are complying with the requirements in 2.6(a) i), 2.6(a) ii) and 2.6(a) iii) and provide suitable evidence. As a minimum this must cover any reasonable adjustments that are made as required by

equality legislation to make those services accessible to disabled people and that in the case of Information Technology services, those services are in accordance with the Authority's standards. Examples of this could be documented evidence that Equality Analysis has been carried out and details of the training delivered ensure staff understands the duties required by equality legislation. Confirmation of compliance and evidence relating to 2.6(a) i), 2.6(a) ii) and 2.6(a) iii) should be detailed in the Diversity and Equality Delivery Plan.

Further general guidance on Diversity and Equality Policies can be found in Appendix 2. This may assist contractors when developing/maintaining the policies which will feed into the Diversity and Equality Delivery Plan required by this schedule. Appendix 2 also includes some information about Equality Analysis.

Schedule section – 3) Monitoring and reporting

Contractors should note that for the purpose of the Diversity and Equality Requirements Schedule the definition of 'disability' is that set out in the Equality Act 2010:

"A disabled person can be defined as someone who has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities."

3.1 to 3.2 and sub paragraphs detail what workforce monitoring data is required from contractors. Contractors are required to provide data relating to the workforce involved in delivery of a contract to DWP. However DWP would greatly welcome data relating to the wider contractor workforce and contractors may find that it is easier to submit data at an organisational level rather than at contract level. Only the percentage of workers/sub contractors for each listed category should be provided. Contractors should ensure that the percentages relating to ethnic groups provided in 3.2(b) i) to xviii) total 100% and should note that a sub contractor may fall into 1 or more of the categories i) to iii) in 3.2(c).

A template for reporting the workforce data has been provided for contractors and can be found at Appendix 3. Completed templates should then form part of the Diversity and Equality Delivery Plan.

3.3 detail the requirement that where possible, contractors must compare their workforce data figures to national/regional statistics around gender, disability and ethnicity, where the statistics are publicly available. A number of suggested data sources can be found in Appendix 4. DWP recognise that publicly available data can be limited and may not be suitable to provide direct comparisons. In these cases the contractor will not be penalised for not providing comparisons. They must still however fulfil the requirements under 3.4 of the schedule. DWP recognise that some proactive contractors may already be comparing their data internally against previous years, against other areas of the organisation or externally. DWP encourage those

contractors to provide any relevant comparisons they have. Any comparisons should be included as part of the Diversity and Equality Delivery Plan.

3.4 details that contractors must provide evidence of what activities they are undertaking, or plan to undertake, in order to try and improve their figures in the categories identified in 3.2 of the schedule. DWP recognise that it may not always be possible or appropriate to try and increase these figures but still requires contractors to demonstrate that they are committed to continuous improvement in this area. Contractors could set targets for themselves to indicate the position their organisation would like to get to in terms of gender, disability and ethnicity in the workforce. Targets are aspirational, demonstrate a proactive organisation and are lawful – it would be good practice for DWP contractors to develop their own targets in this area. However contractors must not set and use quotas in this area – these imply that members of under represented groups will be appointed, regardless of their ability, in order to meet the quota. This is unlawful.

Some example actions to improve figures could include:

- Offer flexible working options which may attract more female workers
- Targeted advertising campaigns – e.g. advertise vacancies in recognised trade associated publications but also in other more general publications that target a wider audience with a view to encouraging applications from a more diverse group
- Establish links with key local/regional/national stakeholders/groups and consult with them to ensure that disability requirements have been fully considered.
- Fast track and mentoring schemes aimed at under represented groups

Evidence provided against 3.4 of the schedule should form part of the Diversity and Equality Delivery Plan.

3.5 refers contractors to the requirements under the Data Protection Act 1998 that will apply (depending on how contractors collect data) in the collection and reporting of workforce monitoring data as specified in paragraph 3. Further information on the Data Protection Act 1998 can be found [here](#) or by searching the Information Commissioners Office website (www.ico.gov.uk). Contractors should note that DWP require percentage figures only in response to 3.2(a), 3.2(b) and 3.2(c) and no personal data (names, job titles etc) relating to the workforce.

Further advice and guidance

A list of useful websites can be found at Appendix 4.

Any queries should be raised with DWP Contract Managers using existing communication channels.

Appendix 1 – The Equality Act 2010

The Equality Act 2010 is the law which bans unfair treatment and helps achieve equal opportunities in the workplace and wider society.

The majority of the Equality Act 2010 came into force on the 1st October 2010. The 2nd stage of the Act, the public sector Equality Duty, commenced on the 5th April 2011.

The Equality Act 2010 replaces previous anti discrimination laws with a single act and simplifies the law removing inconsistencies and making it easier for people to understand and comply with. The act covers nine protected characteristics, which cannot be used as a reason to treat people unfairly. Every person has one or more of the protected characteristics, so the act protects everyone against unfair treatment. The protected characteristics are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

The public sector Equality Duty is a duty on public bodies and others carrying out public functions and will embed equality considerations into the day to day work of public authorities.

The public sector Equality Duty consists of a general duty with 3 main aims:

1. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
2. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
3. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it

Public procurement is classed as a public function under the general duty – this means that all DWP procurement, as well as all other public procurement, **must** consider equality aspects in order to comply with legislation.

Appendix 2 – Diversity and Equality Policies

This appendix provides some further general information and guidance on Diversity and Equality policies. It also contains a brief overview of the importance of Equality Analysis.

The main aims of having a Diversity and Equality Policy include:

- Protecting employees from discrimination on the grounds of age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.
- Promoting diversity in the workforce
- Responding to changing demographics and working patterns that have the potential to impact on the workforce and employment relations

The benefits of producing and maintaining an effective Diversity and Equality policy include:

- Ensuring legislative compliance
- Assures staff and customers that organisation has a commitment to diversity and equality
- Helps to maintain good public and community relations
- Policy can assist in reducing volume of discrimination accusations and claims
- Details the organisations stance on diversity and equality
- Describes how managers and staff can participate in the commitment to diversity

A Diversity and Equality Policy should:

- Be aimed at everyone in the organisation and should be readily available to all
- Be easy to understand
- Be part of the overarching business strategy
- Be developed in consultation with employees and their representatives
- Have commitment from the very top of the organisation and be actively supported by senior management
- Be widely promoted and circulated to all employees and job applicants

Suggested content of a Diversity and Equality Policy includes:

- Statement of aim of policy
- Commitment to providing equality for all
- Confirmation of compliance with all relevant acts of legislation
- Objectives – what is the organisation trying to achieve?
- Actions – what will organisation do to meet objectives?

- Timescales – when will actions be taken?
- Senior responsible owner in organisation – CEO, board member etc
- Resources required to maintain and deliver policy and objectives
- Measures of success/outcomes/KPI's – what will success/progress look like?
- Reviewing arrangements – how often, by who etc
- Areas of unlawful discrimination:

age;
disability;
gender reassignment;
marriage and civil partnership;
pregnancy and maternity;
race;
religion or belief;
sex; and
sexual orientation.

- Other areas not covered by law such as bullying and harassment
- Communication of policy
- Training to raise awareness
- Structure in place to manage diversity and equality
- Diversity and equality cases/tribunals and their outcomes including any remedial actions identified/implemented

Equality Analysis

Key points to remember regarding Equality Analysis:

- Equality analysis is an integral part of policy development and review, informing policy as it develops. If integrated well, equality analysis will be a tool for improved decision-making and it should not mean unnecessary additional activity.
- The objective is not to complete a specific form or template, but to understand the effects of a policy on equality and any actions needed as a result.
- The time and effort involved should be in proportion to the importance of the policy to equality and good relations.
- Equality analysis involves looking for what steps could be taken to advance equality as well as eliminate discrimination, including any action to meet the needs of those affected or to remove or minimise disadvantage.
- Without good evidence, good equality analysis will be difficult to achieve. A lack of information is never an excuse for not analysing the effect on equality, as some evidence will almost always be available. Where it isn't available, take steps to gather it.
- The insights from engagement with employees, service users, trade unions and others affected are important evidence for your equality analysis.

- Document your equality analysis. If you are covered by the specific duties, aim to publish it at the earliest available opportunity.
- Evaluate the effectiveness of your approach to equality analysis and consider any lessons to be fed back into your organisation’s practice.

Appendix 3 – Workforce monitoring data template

- Section 3 of the Diversity and Equality Requirements schedule details the requirements that contractors have for monitoring and reporting data relating to their workforce.
- This template has been designed to assist contractors when submitting workforce data in relation to section 3 of this schedule. Where possible, data (and Diversity and Equality Delivery Plans) should be submitted electronically to DWP contract managers. This template can easily be copied and pasted into a separate document to allow contractors to submit to DWP and include as part of their Diversity and Equality Delivery Plan.
- The order of the template follows that set out in the schedule however the relevant section/paragraph of the schedule is also marked in the left hand column of each section of the template.
- Paragraph 3.2(a) and 3.2(b) of the schedule state that information is provided relating to sub contractors workforce where ever possible. Where information is available, it should be recorded on a separate template, clearly stating which sub contractor it relates to and using one template per sub contractor.

Contractors are reminded that for the purpose of the Diversity and Equality Requirements the definition of ‘disability’ is that set out in the Equality Act 2010:

“A disabled person can be defined as someone who has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities.”

NAME OF CONTRACTOR:

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Gender/Disability in the workforce

Schedule reference	Under represented group	Proportion of workforce (%)
3.2(a) i)	Female	
3.2(a) ii)	Disabled	
3.2(a) iii)	Prefer not to state	

	gender or disability	
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Ethnicity in the workforce (As per 2011 Census)

Schedule reference	Main ethnic group	Racial origin	Proportion of workforce (%)
3.2(b) i) – iii)	White	White British (English/Welsh/Scottish/Northern Irish/British Irish)	
		Gypsy or Irish Traveller	
		Any other white background	
3.2(b) iv) – vii)	Mixed/Multiple ethnic groups	White and black Caribbean	
		White and black African	
		White and Asian	
		Any other mixed/multiple ethnic background	
3.2(b) viii) – xii)	Asian or Asian British	Indian	
		Pakistani	
		Bangladeshi	
		Chinese	
		Of any other Asian background	
3.2(b) xiii) – xv)	Black/African/Caribbean or Black British	African	
		Caribbean	
		Any other Black/African/Caribbean background	
3.2(b) xvi) – xvii)	Other ethnic group	Arab	
		Other ethnic group	
3.2(b) xviii)	Prefer not to state ethnicity	Prefer not to state ethnicity	
For the avoidance of doubt the 18 percentage figures submitted under categories i) to xviii) above should total 100%		TOTAL	

Supplier Diversity

Schedule reference	Type of enterprise	Proportion of subcontractors (%)
3.2(c) i)	Small to medium sized enterprises (meaning enterprises with less than 250 employees and a maximum annual	

	turnover of £40 million)	
3.2(c) ii)	Ethnic minority enterprises (meaning an enterprise 51% or more of which is owned by members of 1 or more ethnic minority groups, or, if there are few owners, where at least 50% of the owners are members of 1 or more ethnic minority groups. For this purpose, ethnic minority groups means ethnic groups other than white British as referred to at paragraph 3.2.2 of the schedule	
3.2(c) iii)	Black ethnic minority enterprises (meaning an enterprise 51% or more of which is owned by members of the Black or Black British ethnic group, or, if there are few owners, where at least 50% of the owners are members of the Black or Black British ethnic group. For this purpose, the Black or Black British ethnic group has the meaning referred to at categories l) to n) in paragraph 3.2.2 of the schedule	
For the avoidance of doubt, any sub contractor may fall into 1, 2 or all of the categories listed in paragraph 3.2(c) of the schedule and above, depending on its composition		

