

EQUAL OPPORTUNITIES: A GUIDE FOR NHS SUPPLIERS



EQUAL OPPORTUNITIES IN THE NHS

In 2007, the NHS spent over £15 billion on goods and services with a diverse range of suppliers – from large multinational companies to small and medium-sized enterprises (SMEs). The NHS believes that its purchasing can act as a force of change for suppliers seeking to develop markets and create employment opportunities. Ultimately, it also affects how the NHS provides effective health care to patients.

Understandably, then, the NHS takes equal opportunities seriously – it has both legal responsibilities and a belief that there is a strong business case for it. Therefore, for an effective and productive relationship, suppliers need to understand why equal opportunities in the NHS are important and, by extension, demonstrate its importance. An important criterion in the procurement process is information relating to equal opportunities and a supplier's approach to issues relating to diversity and discrimination.

For instance, under the Race Relations (Amendment) Act of 2000 (RRA) public authorities, such as the NHS, have a positive legal duty to promote race equality. In fact there are three main areas of this 'general duty' to promote race equality: eliminating unlawful racial discrimination, promoting equality of opportunity, and promoting good relations between people of different racial groups. Therefore, in terms of its relationship with suppliers, the NHS has to build relevant race equality considerations into its procurement process to ensure that all functions meet the requirements of the RRA. By extension, for the NHS to contract with a supplier, the organisation needs to know how suppliers are helping it to meet its responsibilities.

THE NEED FOR AN EQUAL OPPORTUNITIES POLICY

For many companies creating an equal opportunities policy is probably the first step in helping the NHS meet its equal opportunities and diversity responsibilities and objectives. But it may seem like an administrative burden to suppliers.

However, there are several good reasons for businesses to take the time and trouble to prepare an equal opportunities policy:

- It is generally illegal to discriminate in employment matters against anyone on the grounds of race, religion, colour, nationality, sex, marital status or gender reassignment. It is also generally illegal to discriminate against anyone on the grounds of disability and age. The few circumstances in which discrimination on the above grounds is not currently illegal are changing as the UK comes into line with European legislation. But even where discrimination is not currently illegal, an employee might still win a case at an employment tribunal.
- All public sector organisations, such as the NHS, and most large private companies will require their suppliers to have an equal opportunities policy. Crucially, they will also want to see how suppliers demonstrate a policy in practice.
- By developing good practice, companies can benefit from diversity in terms of customer relationships and a wider pool of skills and experience from which to recruit.

DEFINING DISCRIMINATION

According to the legislation there are two types of discrimination that are unlawful:

- Direct discrimination refers to the less favourable treatment of people due to, for instance, race, gender or religion.
- Indirect discrimination refers to discrimination that is inherent in the requirements of a job and/or conditions and practices imposed on the job that have an adverse impact on one group or another.

There is also 'victimisation' whereby under certain legislation people are protected when bringing a complaint of discrimination.

As an employer, the NHS has the same legal obligations on equal opportunities as other businesses. But there is also a legal requirement to ensure that unlawful discrimination does not take

place in the provision of goods and services. This includes any form of discrimination in the NHS supply chain through the employment practices of contractors and subcontractors. That is why the NHS makes demands on its suppliers around equal opportunities.

WHAT DOES AN EQUAL OPPORTUNITIES POLICY NEED TO DEMONSTRATE?

An equal opportunities policy should show that suppliers are aware of their obligations under the law and that a business is committed to meeting those obligations. It may also help demonstrate how a company is interested in benefiting from diversity in society – something public sector organisations are keen to maximise. In the same way the NHS cannot discriminate in favour of suppliers, it expects the same of its suppliers and their staff. But the NHS believes that if suppliers reflect patients, this may lead to a better provision of health care – a major drive for why the organisation is promoting equal opportunities among its suppliers.

Legislation with which suppliers need to comply is not neatly contained in one Act but includes:

- Equal Pay Act (as amended) 1970
- Sex Discrimination Act (as amended) 1975
- The Race Relations Act 1976 (as amended by the Race Relations [Amendment] Act 2000)
- Disability Discrimination Act 1995
- Employment Rights Act 1996
- Human Rights Act 1998
- Part-time Working Regulations 2000
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Sexual Orientation) Regulations 2003
- The Gender Recognition Act 2004
- The Civil Partnership Act 2004
- Disability Discrimination Act 2005
- Employment Equality (Age) Regulations 2006
- Equality Act 2006 (Gender Equality Duty)
- Equality Act 2006 – Part 2 (Discrimination on grounds of religion or belief)
- Equality Act (Sexual Orientation) Regulations 2007

The requirement of this legislation is not very hard to meet for well-managed firms; in fact suppliers do not need an in-depth understanding of all of this legalisation. Instead, an equal opportunities policy should only reflect that a company does not practise any form of discrimination in its day-to-day activities.

WHAT SHOULD BE COVERED IN AN EQUAL OPPORTUNITIES POLICY?

There is no hard-and-fast rule about what should be covered in an equal opportunities policy. But in broad terms there will be a statement of a company's aims and attitude towards equal opportunities and diversity and how it intends to fulfil those aims and legal responsibilities.

On the employment side, for instance, suppliers should include:

- recruitment (including advertising guidance), selection, training, promotion, disciplinary and dismissal
- policies with regard to victimisation, discrimination and harassment; these should be included in disciplinary and grievance procedures
- identification of a person responsible for the policy and its implementation
- communication of the policy to all staff members
- monitoring of job applicants, successful applicants, trainees, grievance, promotions and dismissal
- policy reviews and implementation of changes
- consultation with staff and the workforce

Importantly, aspects of the above are equally relevant for a company's subcontractors and are especially relevant when thinking about public sector supply chains.

On the service delivery side, an equal opportunities policy should make a commitment to providing professional and appropriate services to all people.



PUTTING POLICY INTO PRACTICE

Why the NHS is keen to encourage equal opportunities is clear. But a company's equal opportunities policy must represent a meaningful commitment, not just a piece of paper.

Owners or managers of a company have the responsibility to ensure that discrimination is also not practised by employees and that they are aware that discrimination is not acceptable. That is why an equal opportunities policy has to be supported with practical measures to ensure that discrimination – both direct and/or indirect – is not taking place, wittingly or unwittingly. For instance, jokes based on racial or sexual stereotypes can cause deep offence or embarrassment for some members of staff even when that is not the intention behind them.

Therefore, employees will need training on equal opportunities and diversity issues. Companies may even want to start a dialogue with suppliers and subcontractors about equal opportunities. A channel for complaints is also required and policies will need to be reviewed regularly. Legislation is frequently amended and updated, so companies also need to keep up to date with these changes.

The NHS believes in partnership, and it is important to note that there are resources and expertise within the NHS to help suppliers understand the organisation's commitment to equal opportunities and diversity.

STATEMENT OF INTENT

The statement below serves to illustrate the basic form of an equal opportunities policy. However, it is not exhaustive. Without a documented equal opportunities policy, suppliers are unlikely to win a contract from public sector purchasers including the NHS.

Our policy

The purpose of this policy is to provide equal opportunities to all in employment, irrespective of their gender, race, ethnic origin, disability, age, nationality, sexuality, religion, marital status and social class. We oppose all forms of unlawful and unfair discrimination.

All employees, whether part-time, full-time or temporary, will be treated fairly and equally. Selection for employment, promotion, training or another effect will be on the basis of aptitude and ability. All employees will be helped and encouraged to develop their full potential and the talents and resources of the workforce will be fully utilised to maximise the efficiency of the organisation.

Our commitment

- Every employee is entitled to a working environment which promotes diversity and respect to all. No form of intimidation, bullying or harassment will be tolerated.

- The commitment to equal opportunities in the workplace is good management practice and makes sound business sense.
- We endeavour to treat our subcontractors in the same way as our staff.
- Breaches of our equal opportunities policy will be regarded as misconduct and could lead to disciplinary proceedings.
- This policy is fully supported by senior management and has been agreed with trade unions and employee representatives.
- The policy is monitored and reviewed annually.

Our responsibility:

This policy will be implemented within the framework of relevant legislation which includes:

- Equal Pay Act (as amended) 1970
- Sex Discrimination Act (as amended) 1975
- The Race Relations Act 1976 (as amended by the Race Relations [Amendment] Act 2000)
- Disability Discrimination Act 1995
- Employment Rights Act 1996
- Human Rights Act 1998
- Part-time Working Regulations 2000
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Sexual Orientation) Regulations 2003
- The Gender Recognition Act 2004
- The Civil Partnership Act 2004
- Disability Discrimination Act 2005
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WHAT SUPPLIERS MAY BE ASKED

Suppliers will be asked equal opportunities questions in NHS pre-qualification questionnaires and/or tenders. Any bidder who answers ‘no’ to these questions is likely to fail these selection criteria, and unlikely to proceed to the next stage of the procurement process. It is also important to note that all NHS contracts have equal opportunities clauses in them and their monitoring is taken seriously.

THE BUSINESS CASE FOR DIVERSITY

Having an equal opportunities policy is not only about having the necessary policy to meet the requirements of a public procurement process. Developing diversity within a firm is good for business.

In fact, by addressing discrimination a company can:

- maximise the pool of potential job applicants and improve the chances of recruiting the right person for a job
- become an employer of choice reducing the cost of recruitment and retention
- make more effective use of human capital, improve workforce morale, reduce staff turnover, sickness and absenteeism
- gain goodwill in the community and improve its business profile
- exploit links to increase sales to new customers and clients from black and minority ethnic (BME) communities
- develop the capacity of the workforce to do business with all sections of the community
- provide better customer service, respond effectively to change in the marketplace and become a supplier of choice for the NHS
- utilise untapped resources, including language skills and connections with international markets
- comply with legislation

Importantly, there is a recognition in public procurement that services need to be designed to be accessible and responsive to the needs of different groups. Therefore, suppliers need to gather as much information about the context for meeting equal opportunities objectives. In fact, the representation of this information and linking to the core specification and methodology of delivery can actually help provide bidders with a competitive advantage. Above all, like all public sector bodies, we in the NHS expect suppliers to demonstrate how they ensure equal opportunities.



SOURCES OF FURTHER INFORMATION IN THE NHS

Mosaic project
www.mosaic.nhs.uk

NHS Purchasing and Supply Agency (PASA)
www.pasa.nhs.uk

MORE GENERAL SOURCES OF INFORMATION

Age Positive
www.agepositive.gov.uk

The Commission for Racial Equality
www.cre.gov.uk

The Disability Rights Commission
www.drc-gb.org

Employers Forum on Age
www.efa.org.uk

The Equal Opportunities Commission
www.eoc.org.uk

Improvement and Development Agency
www.idea.gov.uk

Office of Government Commerce
www.ogc.gov.uk

Opportunity Now
www.opportunitynow.org.uk

Race for Opportunity
www.raceforopportunity.org.uk

Royal Association for Disability and Rehabilitation (RADAR)
www.radar.org.uk

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PASS – HELPING YOU MEET KEY OBJECTIVES

The key objective of public procurement professionals is to ensure that the most suitable supplier is selected to provide goods and services on terms which are likely to offer the best value for money. The PASS service helps you meet this requirement and deliver contracts that offer best value-for-money terms with suppliers who will execute them efficiently.

PASS CONSULTANCY

BIP's *Procurement Advice and Support Service (PASS)* provides organisations with access to experts in public procurement practices and procedures, thus helping you develop and deliver effective and efficient procurement. Our team offers a range of services to meet your specific needs. Whichever area you wish evaluated and improved, we have the experts to help.

The PASS consultancy's mission is to help you deliver the best in government procurement through:

- Practical solutions to improve procurement performance
- Innovative approaches to knowledge transfer within government
- Joined-up government
- Improved performance indicators
- Strategic direction and performance
- Opportunities offered by e-government
- Capacity to deliver change to meet identified needs
- Continuous improvement of services and challenging poor performance
- Sustainable development within decision-making processes and delivery of services
- EU-compliant processes
- Best practice procurement training

PASS TRAINING

Our consultants can provide you with bespoke training packages to suit your needs. Consultancy and training is available for the following: environmental purchasing, partnering, evaluation, e-government, supplier debriefing, UK legal processes and precedents, contract management, EU-compliant tendering and much more.

PASS ONLINE GUIDANCE

The PASS service provides online guidances on all aspects of the public procurement process and legal requirements: www.bipsolutions.com/html/briefing.php

PASS – EFFECTIVE DISPUTE MANAGEMENT

Contractual and procurement-related disputes are time-consuming, expensive and unpleasant. They can destroy client/contractor relationships, can add substantially to the cost of the contract, and can nullify some or all of its benefits or advantages. They can also have an impact on value for money. It is therefore in everyone's interest to work at avoiding disputes in the first place. Inevitably, however, disputes do occur and when they do the importance of a fast, efficient and cost-effective Alternative Dispute Resolution (ADR) procedure cannot be overstated. If a dispute arises, it is important to manage it actively and positively and at the right level in order to encourage early and effective settlement. Unnecessary delays and inefficiency can lead to rapid deterioration in relations and entrenchment of opinions. ADR through PADRE mediation involves the use of a trusted expert third party and is an effective alternative to litigation. PADRE mediation is provided by experts in contracting and public procurement. If you would like more details on how PADRE can help your organisation and become your mediation service of choice, telephone the PASS team on **0845 270 7055** or email pass@bipsolutions.com.

PASS HEALTH CHECK

The PASS service can help your organisation examine its current procurement organisational structures, strategies, processes, practices and related strengths and weaknesses. It delivers a detailed *PASS Mark Health Check Outcome Highlight Report (OHR)* that outlines areas of strength as well as those requiring further attention, and provides an outline *Project Initiation Document (PID)* designed to deliver a more effective and efficient tendering process that will help you achieve optimum performance and better value-for-money procurement.

PASS IN-HOUSE PRESENTATIONS

PASS consultancy can provide you with in-house presentations directed to buyer or supplier. Each presentation will be bespoke to your requirements, whether they be with regards to improving your tendering practices or your procurement strategy or processes. Contact: pass@bipsolutions.com



The *PASS Mark Health Check* is a process-based evaluation technique that helps identify how your company can develop more effective processes when tendering for public sector contracts.

For further information on the **PASS** service, contact our **PASS Team** on **0845 270 7055**, email pass@bipsolutions.com or visit www.bipsolutions.com/pass/