

the expression "**Local Community**" means those areas of London affected by the Works from time to time.

6 Monitoring and Reporting

6.1 Subject to paragraph 6.2, the Service Provider shall use reasonable endeavours to provide the Authority on the date of this Contract and subsequently every 12 months from the date or such other frequency as the Authority may reasonably request of this Contract with the following information:

An annual report on performance and compliance with the equality and diversity provisions as set out in paragraphs 2 to 5. The annual report should set out:

- (a) the performance of the Service Provider over the past 12 months in relation to the Agreed Strategic Equality and Diversity Plan, the Agreed Training Plan, the Agreed Supplier Diversity Plan and the Agreed Communications Plan and/or the action plan submitted for the previous 12 months in accordance with paragraph 6.1 (d)
- (b) the proportion of its employees engaged in the performance of the Contract and, to the extent reasonably possible, the employees of its direct or indirect subcontractors engaged pursuant to the terms of the relevant subcontracts in the performance of the Contract who are:
 - (i) female;
 - (ii) of non-white British origin or who classify themselves as being non-white British;
 - (iii) from the Local Community;
 - (iv) disabled
- (c) the proportion of its direct or indirect subcontractors that are SMEs and/or BAMEs and/or other suppliers from other under-represented or protected groups.
- (d) a plan of action for the forthcoming 12 months showing what the Service Provider plans to do to continue delivery of the equality & supplier diversity objectives.

For the purposes of this clause, the meaning of SME and BAME is as set out in the attached document called TfL Supplier Diversity Definitions.

6.2 The Service Provider shall ensure at all times that it complies with the requirements of the Data Protection Act 1998 (as may be amended) in the collection and reporting of the information to the Authority pursuant to paragraph 6.1.

7 Equality and Diversity Infractions

7.1 If the Service Provider or any of its direct subcontractors commits a Equality & Diversity Infraction, the Authority shall be entitled (but not obliged) to act as follows:

- (a) if a Equality & Diversity Infraction is committed by the Service Provider then the Authority may serve written notice upon the Contractor identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the Service Provider shall cease committing and remedy, at its own cost, the Equality & Diversity Infraction, within 30 days of receipt of such notice (or such longer period as may be specified in the notice); or
- (b) if the Equality & Diversity Infraction is committed by a direct subcontractor of the Service Provider, the Authority may serve written notice upon the Service Provider identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the Service Provider shall procure that the direct subcontractor ceases committing and remedies, at its own cost, the Equality & Diversity Infraction within 30 days of receipt by the Service Provider of such notice (or such longer period as may be specified in the notice). If the Service Provider fails to procure the remedy of the Diversity Infraction, the Authority may serve a further written notice upon the Service Provider and within 30 days of receipt of such further notice (or such longer period as may be specified in the notice), the Service Provider shall terminate, at its own cost, the relevant contract with its direct subcontractor and procure performance of the affected works or services by another person which also complies with the obligations specified in paragraphs 2 to 5 of this Schedule.

7.2 It shall be a fundamental term and condition of the Contract that the Service Provider complies with its obligations under paragraphs 7.1 (a) to 7.1(b). Where, following receipt of a notice given pursuant to clause paragraph 7.1(a) or 7.1(b) the Service Provider fails to remedy a Diversity Infraction to the satisfaction of the Authority or in the case of paragraph 7.1(b) fails to terminate the contract with a defaulting subcontractor and procure performance by another person on the terms specified in paragraph 7.1(b) the Service Provider will be in breach of the Contract and the Authority shall be entitled (but not obliged) to terminate the Contract, without further notice to the Service Provider, in accordance with Clause 34 (Breach and termination of the Contract).

7.3 For the purposes of this paragraph 7 "Equality & Diversity Infraction" means any breach by the Service Provider of its obligations specified in paragraphs 2 to 5 of this Schedule and/or any failure by a direct subcontractor to adopt and implement a strategic equality and diversity plan, a diversity training plan and/or a supplier diversity plan as described in paragraphs 2 to 5 of this Schedule.

8 Equality and Diversity Audit

8.1 The Authority or its nominee may from time to time undertake any audit or check of any and all information regarding the Service Provider's compliance with paragraphs 2 to 5

- 8.2 The Authority's rights pursuant to this paragraph shall include any and all documents and records of the Service Provider and its direct contractors and, where applicable, subject to the provisions of paragraphs 2 to 4 indirect subcontractors and shall include the Minimum Records.
- 8.3 The Service Provider shall, maintain and retain the Minimum Records for a minimum of seven (7) years from the termination or expiry of the Contract with respect to all matters in respect of the performance of and compliance with paragraphs 2 to 5. The Service Provider shall procure that each of its direct and, where applicable subject to the provisions of paragraphs 2 to 4, indirect subcontractors shall, maintain and retain the Minimum Records for a minimum of seven (7) years from the termination or expiry of the Contract with respect to all matters in respect of the performance of and compliance with paragraphs 2 to 4. The Service Provider shall procure that each subcontract between it and its direct subcontractors and, where applicable, subject to the provisions of paragraphs 2 to 4 each subcontract between its direct subcontractor and any indirect subcontractor of the Service Provider shall contain rights of audit in favour of and enforceable by the Authority substantially equivalent to those granted by the Service Provider pursuant to this paragraph 8.
- 8.4 The Authority shall use reasonable endeavours to co-ordinate its audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Service Provider and each direct subcontractor is not, without due cause, disrupted or delayed in the performance of its obligations under the Contract and/or relevant subcontract (as the case may be).
- 8.5 The Service Provider shall promptly provide, and procure that its direct subcontractors and, where applicable subject to the provisions of paragraphs 2 to 4 indirect subcontractors promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:
- (a) granting or procuring the grant of access to any premises used in the Service Provider's performance of the Contract or in the relevant subcontractor's performance of its subcontract, whether the Service Provider's own premises or otherwise;
 - (b) granting or procuring the grant of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Service Provider's or the relevant subcontractor's obligations specified in paragraphs 2 to 4 wherever situated and whether the Service Provider's own equipment or otherwise; and
 - (c) complying with the Authority's reasonable requests for access to senior personnel engaged in the Service Provider's performance of the Contract or the relevant subcontractor's performance of its subcontract.
- 8.6 For the purposes of this paragraph 8 the expression Minimum Records means all information relating to the Service Provider's performance of and compliance with paragraphs 2 to 5 and the adoption and implementation of a strategic equality and diversity plan, an equality & diversity training plan and a supplier

diversity plan by each direct and, where applicable, subject to the provisions of paragraphs 2 to 4 indirect subcontractor of the Service Provider.

Transport for London



TfL Supplier Diversity Definitions

Issue Date: February 2010

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1. Document Outline

1.1 Background

Encouraging a diverse base of supplier forms a part of the GLA Group Responsible Procurement Policy. The TfL Supplier Diversity Definitions ensure consistency across Supplier Diversity activities across TfL. These definitions form a basis for the TfL Supplier Diversity Policy and act as a basis for alignment in the measurement of diverse suppliers.

1.2 Version Control

Version Date	Author	Notes
26 February 2010	C Cottam	Turnover/Balance Sheet Amendment
02 February 2009	C Cottam	SME definition update
31 January 2008	J Gall	Ownership categorisation
8 th May 2006	J Gall	EU definitions
19 th October 2005	J Gall	Updates/clarifications

2. Diverse Suppliers

For the purposes of TfL's Procurement Supplier Diversity Programme, "Diverse Suppliers" comprise the following four subsets:

- 2.1 Small and Medium Enterprises (SMEs)
- 2.2 Black, Asian and Minority Ethnic (BAME) businesses
- 2.3 Suppliers from other under-represented or protected groups
- 2.4 Suppliers demonstrating a diverse workforce composition

The more detailed explanations of the four above subsets are given in the sections below.

3. Small and Medium Enterprises (SMEs)

3.1 A Small Enterprise⁵ is a business which has both the following:

- i) 0-49 Full Time Equivalent employees¹;

AND EITHER

- ii) Turnover² per annum of no more than £5.6 million net (or £6.72 million gross); in the last financial year;

OR

- iii) Balance sheet total⁴ of no more than £2.8 million net (£3.36 million gross).

3.2 A Medium Enterprise⁵ is a business which has both the following:

- i) 50-249 Full Time Equivalent employees¹;
- AND EITHER

- ii) Turnover² per annum of no more than £22.8 million net (or £27.36 million gross) in the last financial year;

OR

- iii) Balance sheet total⁴ of no more than £11.4 million net (or £13.68 million gross).

3.3 A Large Enterprise⁵ is a business which has both the following:

- i) 250 and over Full Time Equivalent employees¹;

AND EITHER

- ii) Turnover² per annum over £22.8 million net (or £27.36 million gross) in the last financial year;

OR

- iii) Balance sheet total⁴ of over £11.4 million net (or £13.68 gross).

¹ Full Time equivalent employees is defined in Section 7.1

² Turnover is defined in Section 7.3

⁴ Balance Sheet Total is defined in Section 7.5

⁵ Further explanation is outlined in Section 7.7 (Definition of Size) & 7.8 (Ownership Categorisation)