

Procurement: Are you  
doing it right?  
Yes

  

Gender Mainstreaming

# Gender-responsive public procurement



# Gender-responsive public procurement



# Acknowledgements

This publication was prepared under the gender mainstreaming programme of the European Institute for Gender Equality (EIGE). It constitutes an integral part of EIGE's gender mainstreaming platform. The work published on the platform represents a joint effort by EIGE's Gender Mainstreaming Team and various experts and contractors who contributed in varying degrees to different sections of the platform: Catarina Arnaut, Davide Barbieri, Daria Broglio, Irene Dankelman, Marianne Dauvellier, Jane Dennehy, Aleksandra Duda, Dr Anna Elomäki, Lucy Ferguson, Elena Ferrari, Maxime Forest, Katia Frangoudes, Regina Frey, Pat Irving, Dr Elisabeth Klatzer, Manuela Samek Lodovici, Daniela Loi, Lin McDevitt-Pugh, Katerina Mantouvalou, Lut Mergaert, Siobán O'Brien Green, Nicola Orlando, Thera van Osch, Katarina Persson, Flavia Pesce, Irene Pimminger, Sheila Quinn, Cristina Radoj, Alide Roerink, Lenka Simerska, Cristina Vasilescu, Nathalie Wuiame and Margherita Sofia Zambelli.

EIGE would also like to thank its Experts' Forum members, members of the gender mainstreaming thematic network and the European Commission, who have contributed to a large extent with their expertise, ideas and feedback.

This publication is available online through EIGE's gender mainstreaming platform (<http://eige.europa.eu/gender-mainstreaming>).

EIGE created the platform to support the EU institutions and governmental bodies with the integration of a gender perspective into their work. The platform provides insights on the relevance of gender in a variety of policy areas and offers online tools for gender mainstreaming.

The platform helps to improve individual and institutional competences to mainstream gender in the different sectorial areas and throughout the different stages of the development of any policy/programme/project. Understanding how to design, plan, implement, monitor and evaluate policies from a gender perspective will strengthen EU policies, increasing their societal relevance and responsiveness.

The author of this brief is Linda Mans, with contributions from Abby Semple, Dina Loghin, Valentina Caimi, Stephen Nottingham and Anita Cortés.

# European Institute for Gender Equality

The European Institute for Gender Equality (EIGE) is an autonomous body of the European Union established to strengthen gender equality across the EU. Equality between women and men is a fundamental value of the EU and EIGE's task is to make this a reality in Europe and beyond. This includes becoming a European knowledge centre on gender equality issues, supporting gender mainstreaming in all EU and member state policies, and fighting discrimination based on sex.

European Institute for Gender Equality, EIGE  
Gedimino pr. 16  
LT-01103 Vilnius  
LITHUANIA

Tel. +370 52157444

Email: [eige.sec@eige.europa.eu](mailto:eige.sec@eige.europa.eu)

 <http://www.eige.europa.eu>

 [www.twitter.com/eurogender](https://www.twitter.com/eurogender)

 [www.facebook.com/eige.europa.eu](https://www.facebook.com/eige.europa.eu)

 [www.youtube.com/eurogender](https://www.youtube.com/eurogender)

 <http://eurogender.eige.europa.eu>

 <https://www.linkedin.com/company/eige>

Luxembourg: Publications Office of the European Union, 2021

Print ISBN 978-92-9482-934-4 doi:10.2839/593802 MH-01-21-163-EN-C

PDF ISBN 978-92-9482-933-7 doi:10.2839/91977 MH-01-21-163-EN-N

© European Institute for Gender Equality, 2021

Cover image: © Yeexin Richelle/Shutterstock.com

Reproduction is authorised provided the source is acknowledged.

Reuse is authorised provided the source is acknowledged, the original meaning is not distorted and EIGE is not liable for any damage caused by that use. The reuse policy of EIGE is implemented by the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU).

# Contents

<b>1. What</b>	<b>4</b>
1.1. What is gender-responsive public procurement?	4
1.2. Context and purpose of gender-responsive public procurement	5
1.2.1. EU context	5
1.2.2. Purpose	5
1.3. Gender-responsive public procurement as a gender mainstreaming method and tool	6
1.4. The EU legal and policy framework for gender-responsive public procurement	6
1.5. Application of gender-responsive public procurement at different levels	8
1.6. Enabling factors of gender-responsive public procurement	9
<b>2. How</b>	<b>11</b>
2.1. How does gender-responsive public procurement work?	11
2.2. Stages of procurement	11
2.2.1. Pre-tender stage	11
2.2.2. Tender stage	16
2.2.3. Post-tender stage	21
2.2.4. Support structure	26
<b>3. Why</b>	<b>28</b>
3.1. Why is gender-responsive public procurement important?	28
3.1.1. Challenges for gender-responsive public procurement under EU procurement law	29
3.1.2. Possible new perspectives for gender-responsive public procurement	30
<b>Bibliography</b>	<b>31</b>
References and further information	31
Other references	31

# 1. What

## 1.1. What is gender-responsive public procurement?

Gender-responsive public procurement (GRPP) is a gender mainstreaming tool to promote gender equality through public procurement.

### Definition of gender-responsive public procurement

GRPP is procurement that promotes gender equality through the goods, services or works being purchased. This means that buyers and suppliers examine the impact of all contracted activities on women's and men's needs, interests and concerns, and design and deliver contracts in a way that reduces inequalities. It does not necessarily entail higher costs, but does require knowledge and capacity.

### More on what gender-responsive public procurement is

Gender equality is a fundamental value of the European Union (EU). Promoting gender equality in all its activities is one of the EU's tasks, required by the treaties <sup>(1)</sup>. The EU's gender equality policy objectives are wide-ranging, and include fostering equal economic independence for women and men, closing the gender pay gap, advancing the gender balance in decision-making, ending gender-based

violence and promoting gender equality beyond the EU.

To achieve gender equality, EU institutions and Member States should apply gender mainstreaming to all their policies, laws and budgets.

Gender budgeting is a gender mainstreaming tool to achieve equality between women and men by focusing on how public resources are collected and spent <sup>(2)</sup>. The gender dimension should be integrated into all phases of the budgetary cycle, from the budgetary proposals (*ex ante*) and throughout the spending itself (*ex nunc*) to the evaluation and control of the money actually spent (*ex post*).

An important element of public spending or expenditure into which the gender dimension can be integrated is public procurement contracts. In this way, GRPP can be considered a means of implementing gender budgeting.

EU institutions and Member State government departments or regional and local authorities 'are important consumers whose procurement practices can (re)produce, increase or diminish societal (in)equality' <sup>(3)</sup>. When public authorities purchase supplies, works and services from companies, they can and should design public procurement processes and practices in a way that promotes gender equality; this is what GRPP is.

<sup>(1)</sup> Articles 2 and 3(3) of the founding Treaty on European Union (TEU; see the Consolidated version of the Treaty on European Union, OJ C 326, 26.10.2012, p. 13 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT>)), Articles 21 and 23 of the Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, p. 391 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012P%2FTXT>)) and Article 8 of the Treaty on the Functioning of the European Union (TFEU; see the Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p. 47 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>)) call for equality between women and men. Article 8 of the TFEU, for example, explicitly requires the EU to eliminate inequalities and promote equality between women and men through all its activities (i.e. ensure gender mainstreaming).

<sup>(2)</sup> EIGE, 2019b.

<sup>(3)</sup> Sarter, 2019.

## 1.2. Context and purpose of gender-responsive public procurement

### 1.2.1. EU context

According to the EU gender equality strategy for 2020–2025, '[t]he Commission's guidance on socially responsible public procurement will fight discrimination and promote gender equality in public tenders' (4). This is what is known as GRPP.

Socially responsible public procurement (SRPP), which GRPP is part of, is supported by the EU legal framework for public procurement (5).

Applying GRPP to promote gender equality from the beginning of the procurement cycle means asking questions such as: do the services, supplies or works I intend to buy have different implications for women and men, in all their diversity? Do women and men, in all their diversity, have different needs in relation to the services,

supplies or works? Which social and labour laws and collective agreements that promote the equality of women and men at work are applicable to the contract? In this sense, the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) defines GRPP as 'the selection of services, goods and civil works that considers their impact on gender equality and women's empowerment' (6).

### 1.2.2. Purpose

- Public procurement has great potential to promote gender equality.
- Integrating the gender perspective into public procurement contracts and using them to promote equality between women and men form part of the efforts to achieve sustainable and socially responsible procurement (7).
- Integrating the gender perspective into the public procurement cycle and contracts can lead to improved efficiency in government spending (8).

#### More on the definition and purpose of gender-responsive public procurement

- **Public procurement has great potential to promote gender equality.** GRPP can leverage public spending to pursue a fairer allocation of economic resources and improve living standards for both women and men. Public buyers are major investors in the EU, spending 14 % of its gross domestic product (GDP) (9). Achieving value for money and delivering wider benefits such as gender equality objectives often go hand in hand. GRPP can help to ensure that wages paid under contracts are legal and adequate, and that bidders are not avoiding social obligations. This is especially relevant in low-wage sectors such as cleaning, catering, childcare and call centres.
- **GRPP contributes to efforts towards sustainable procurement.** The United Nations (UN) 2030 agenda for sustainable development acknowledges that taking gender into account is crucial in implementing all of its goals and targets. This includes target 12.7, which aims to promote sustainable practices in the area of public procurement. The most positive impact on society can only be achieved by taking potential differences

(4) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A Union of equality: Gender equality strategy 2020–2025, COM(2020) 152, 5.3.2020 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0152>), p. 17.

(5) For discussion of the possibilities under the EU legal framework, see EIGE (forthcoming).

(6) <https://www.unwomen.org/en/about-us/procurement/gender-responsive-procurement>

(7) Institute for the Equality of Women and Men, 2018

(8) Institute for the Equality of Women and Men, 2018.

(9) European Commission, 2017.

between the situations of women and men into account. Taking these differences into account can also lead to better results in economic and ecological terms, for example by ranking environmental concerns and gender equality concerns as equal in criteria to encourage more innovative solutions and alternative business models based on life cycle costing that can be applied to categories like workwear (in textiles). When contractors carry out specific actions to promote the equality between women and men this can also help to meet sustainable development goal 5 on gender equality and the empowerment of women and girls in order to achieve a more sustainable, inclusive and equal society <sup>(10)</sup>.

- **GRPP can improve efficiency in public spending.** When the requested end result of public procurement is matched as well as possible to the situation of both genders, it will reach a larger target group and meet the needs of both women and men in a better way, allowing for a more efficient use of resources <sup>(11)</sup>.

### 1.3. Gender-responsive public procurement as a gender mainstreaming method and tool

In the European Union, contracting authorities can decide to use public procurement to achieve social outcomes, which can include gender equality, but these are not mandatory.

Mainstreaming gender by integrating a gender perspective into public procurement can ensure equitable access to public contracts and provide benefits by diversifying the supply chain. Hence GRPP can be considered a method of gender mainstreaming.

GRPP plays an important role in implementing other gender mainstreaming initiatives, such as gender budgeting. An important step to raise awareness about the links between GRPP and other gender mainstreaming methods and tools

would be to recognise and make GRPP explicit in the legal and policy frameworks governing these other initiatives.

For guidance on how to implement GRPP in practical terms, the European Institute for Gender Equality (EIGE) will produce a toolkit for contracting authorities and gender equality practitioners. The toolkit will explain step by step how to plan and implement GRPP.

### 1.4. The EU legal and policy framework for gender-responsive public procurement

GRPP has a basis in the financial regulation (Regulation (EU, Euratom) 2018/1046) <sup>(12)</sup> and the EU legal framework for public procurement. The legal framework has evolved into a comprehensive set of rules and principles governing the

<sup>(10)</sup> Institute for the Equality of Women and Men, 2018.

<sup>(11)</sup> Institute for the Equality of Women and Men, 2018.

<sup>(12)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.7.2018, p. 1 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=cel-ex:32018R1046>).

award of public contracts <sup>(13)</sup>. The three 2014 procurement directives aim to facilitate greater strategic use of procurement, including for the advancement of social objectives.

The European Commission explicitly states in its gender equality strategy for 2020–2025 that '[t]he Commission's guidance on socially responsible public procurement will fight discrimination and promote gender equality in public tenders' <sup>(14)</sup>. As one of the first deliverables of the strategy, the Commission has proposed binding measures on pay transparency under the draft

directive on pay transparency, which specifically addresses equal pay and the pay gap in the context of public procurement (in Article 21) <sup>(15)</sup>.

In addition, GRPP is part of government spending and thus forms part of gender budgeting. Gender budgeting has a firm basis in the EU commitment to gender mainstreaming expressed in the Treaty on the Functioning of the European Union (TFEU) <sup>(16)</sup>. The European Parliament and the Council of the European Union have repeatedly called on the EU and its Member States to develop and implement gender budgeting <sup>(17)</sup>.

### More on the EU legal policy framework for gender-responsive public procurement

#### Treaty on European Union – Articles 2 and 3 – and Treaty on the Functioning of the European Union – Articles 8, 153 and 157

##### *Opportunities*

- Articles 2 and 3 of the Treaty on European Union (TEU) enshrine the core values of the EU, including equality between women and men, freedom and respect for human dignity.
- Article 8 of the TFEU requires the EU to aim to eliminate inequalities between women and men in all its activities. Article 153 enables the EU to work with Member States to promote labour market equality, and Article 157 requires Member States and the EU to ensure equal pay for equal work / work of equal value.

<sup>(13)</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.3.2014, p. 65 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>); Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, OJ L 94, 28.3.2014, p. 243 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0025>); and Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, OJ L 94, 28.3.2014, p. 1 ([https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.094.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.094.01.0001.01.ENG)).

<sup>(14)</sup> COM(2020) 152.

<sup>(15)</sup> Proposal for a directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, COM(2021) 93, 4.3.2021 ([https://ec.europa.eu/info/sites/default/files/aid\\_development\\_cooperation\\_fundamental\\_rights/com-2021-93\\_en\\_0.pdf](https://ec.europa.eu/info/sites/default/files/aid_development_cooperation_fundamental_rights/com-2021-93_en_0.pdf)).

<sup>(16)</sup> The TFEU, together with the TEU, entered into force in 2009 following the Treaty of Lisbon (2007). The two constitute the founding treaties of the European Union.

<sup>(17)</sup> The Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management as well as on new own resources in the multiannual financial framework 2021–2027, gives the Commission the mandate to promote equality between women and men throughout the implementation and monitoring of programmes and examine how to develop a methodology to measure the relevant expenditure at programme level in the multiannual financial framework 2021–2027 (OJ L 4331, 22.12.2020, p. 28–46), Point 16 (f) of IIA of 16 December 2020.

*Challenges*

Direct citation or application of Articles 2 and 3 of the TEU in the context of procurement is rare, and it is difficult for parties not directly concerned by a tender (e.g. members of the public) to challenge the way in which these principles are applied.

As the procurement directives only refer to equal treatment of women and men in the recitals relating to contract conditions (e.g. recital 98 of Directive 2014/24/EU), the broader links between procurement and gender equality are not well recognised.

**Charter of Fundamental Rights of the European Union – Articles 21, 23 and 33***Opportunities*

- Article 21 prohibits discrimination on a number of grounds, including sex.
- Article 23 requires equality between women and men in all areas including employment, work and pay, but allows positive discrimination (measures in support of the under-represented sex).
- Article 33 protects the family and the right to maternity and parental leave.

*Challenges*

Direct reliance upon the charter can be difficult. However, Member States are bound to apply it when they act within the scope of EU law, which includes procurement. EU institutions are bound to respect the charter in all their activities. It could perhaps be relied upon in challenges against, for example, a positive discrimination measure adopted in a procurement process, but there is little precedent for this.

## 1.5. Application of gender-responsive public procurement at different levels

GRPP can be applied at all levels of government. Examples of GRPP that can be implemented by contracting authorities at all levels, including EU institutions, include the following.

- In a contract for cleaning services, a government department consults with cleaning companies and their staff in order to determine the scope for improving work-life balance for cleaners (e.g. cleaning could be carried out during the working day rather than in the evenings).
- In a contract for uniforms, an emergency services provider examines the entire supply chain to ensure that all workers receive a fair wage, human and employment rights are respected and the uniforms are suitable and comfortable for both women and men employees to wear.
- In a contract for social housing, a local authority specifically considers how planning and design may affect women and men differently. This could include safety issues (e.g. lighting and visibility), access to transport, employment and childcare and the height or layout of facilities. In addition, during the procurement process, the authority aims to create employment and training opportunities for both women and men, including single parents and those seeking to retrain or re-enter the workforce.
- A state agency holds market engagement events which encourage businesses and

social enterprises owned and operated by women to participate in tenders, for example by explaining procedures, considering feedback and ensuring that the structure and size of contracts is appropriate to encourage maximum participation.

- The European Commission launches a tendering procedure to commission a study on the impact of the COVID-19 pandemic on the increase in homelessness among women suffering domestic violence. Selection criteria include prior experience in conducting gender studies. Award criteria require the team conducting the study to have specific expertise in homelessness from a gender perspective.

## 1.6. Enabling factors of gender-responsive public procurement

Effective implementation of GRPP requires political commitment matched with technical capacity for gender mainstreaming. Engaged leadership is of particular importance in ensuring that gender equality is integrated into the public procurement cycle and that public procurement outcomes benefit women and men equally <sup>(18)</sup>.



© 2020 fizkes/Shutterstock

Key enabling factors of GRPP include:

- political will and political leadership;
- high-level commitment from public administrative institutions and structured collaboration between bodies/departments in charge of public procurement and those responsible for gender equality;
- improved technical capacity of civil servants;
- civil society awareness and involvement;
- availability of sex-disaggregated data to measure the impact of public contracts on women and men.

### More on the key enabling factors of gender-responsive public procurement

- **Political will and political leadership**, demonstrated through active political commitment to promote gender equality, are the most important enabling factors. Political will can be demonstrated and evidenced when references are made to gender equality in procurement laws, strategies and guidelines; and when public procurement is mentioned as a tool to promote gender equality in gender equality/mainstreaming laws, policies and strategies.
- **High-level commitment from public administrative institutions** is an important enabling factor. By issuing clear instructions for implementation and follow-up, public institutions enable civil servants to contribute to meeting the government's gender equality commitments. This means that institutionalisation of GRPP and collaboration between contracting authorities and gender equality bodies must be facilitated and strengthened.
- **Improved technical capacity of civil servants** is needed to implement GRPP, and requires dedicated training and resources for procurement officers and commissioners. Training for civil servants of bodies and public administration departments responsible for gender equality is also needed, to make them aware of public procurement as a tool to promote

<sup>(18)</sup> The enabling factors found in this study are similar to those of gender budgeting (see EIGE (2019b)).

gender equality. This must be coupled with the public administration's political will and commitment to gender equality to ensure that ambitions and ability are matched.

- **Civil society** has an important role to play in raising awareness about and promoting gender equality as a legitimate objective within public procurement policy, at both the EU and the national levels. Civil society can act as a change agent to make political leaders and public administrative institutions aware of GRPP as a tool for gender mainstreaming.
- **Availability of sex-disaggregated data** is an enabling factor in conducting gender analyses of public procurement. Directive 2014/24/EU sets minimum requirements regarding the monitoring of procurement at the Member State level, and also empowers the European Commission to monitor strategic procurement. At the national level, more comprehensive systems may be in place to collect statistics on SRPP, which could include tracking gender issues, such as gathering data on the percentage of public contracts awarded to women-owned businesses. This information is required in order to formulate evidence-based gender equality targets and objectives and to systematically monitor progress. The process of implementing GRPP will often also improve the collection of sex-disaggregated data and gender statistics <sup>(19)</sup>.

<sup>(19)</sup> See <https://eige.europa.eu/gender-mainstreaming/methods-tools/sex-disaggregated-data> for more information about sex-disaggregated data and its use as a gender mainstreaming tool.

## 2. How

### 2.1. How does gender-responsive public procurement work?

Promoting equality between women and men can be integrated into public procurement contracts, for example in the **selection criteria** (by excluding discriminatory companies), the **contract award criteria** (by including gender as a sub-criterion linked to the subject matter when evaluating the quality of the offer) and the **contract performance conditions** (through the obligation to take the gender perspective into account when carrying out the commissioned tasks).

GRPP can focus on the **content** of the contract: the measures that ensure that the end result takes into account the situation of both women and men.

To a certain extent, GRPP can also focus on the promotion of equality between women and men among **contractors** <sup>(20)</sup>.

Overall, it is important to use the most **inclusive language** possible, referring to both genders (she or he, businesswoman/businessman, etc.). This makes contractors aware that their target audience (for a study, campaign, etc.) usually consists of both women and men.

Opportunities for GRPP under the 2014 procurement directives and the financial regulation are listed below for each of the stages of procurement, along with a box detailing an example <sup>(21)</sup>.

### 2.2. Stages of procurement

#### 2.2.1. Pre-tender stage

Prior to launching a tender, contracting authorities undertake various preparatory activities. This is an **important stage** for the implementation of GRPP, as it determines the way in which the authority will interact with the market to obtain the supplies, services or works it needs.

During this stage, it is necessary to reflect on whether the contract has a gender perspective <sup>(22)</sup>. What is the ultimate target audience of the performance of this contract and does it consist of both women and men? Are there differences in the situations of those women and men <sup>(23)</sup>?

It is important that the **criteria and conditions** relating to the promotion of equality between women and men be **linked to the subject matter of the tender** and **not be disproportionate**.

If the tender involves an area where there are differences in the situation of women and men, a request to take this into account should ideally be included in the aims of the tender.

Care should be taken with respect to the procurement principles of transparency, proportionality, equal treatment and non-discrimination to ensure that activities do not prejudice the procedure, for example by giving any one operator an unfair advantage or disadvantage.

<sup>(20)</sup> See EIGE (forthcoming).

<sup>(21)</sup> For full descriptions of the examples and an in-depth description of the legal grounds, see EIGE (forthcoming).

<sup>(22)</sup> See EIGE (2019a) for more information about gender analysis and its use as a gender mainstreaming tool.

<sup>(23)</sup> Institute for the Equality of Women and Men, 2018.

### **Box 1. Example: Mainstreaming GRPP through procurement training (Munich, Germany)**

#### **Stage of procurement**

Pre-procurement and procurement.

#### **Brief description of the context**

The City of Munich is a signatory to the European Charter for Equality of Women and Men in Local Life. Initiated by the Council of European Municipalities and Regions, this charter includes a number of measures in different areas, including public procurement. In this framework, Procurement Office 1, which manages most purchasing not related to construction work, was given the mandate to include gender equality objectives in its procurement processes.

#### **Objectives of the tendering procedure**

By using examples of GRPP in training materials that target both procurers and administrative staff, the City of Munich aims to mainstream gender-responsive approaches in procurement. This will raise the awareness of what gender considerations can be taken into account within the existing legal framework.

#### **Description of the procedure**

Both the training materials for procurers and those for the wider administrative staff use examples of gender equality to explain different phases of the procurement cycle. Thus, gender equality is addressed in a number of ways, from excluding potential bidders that have demonstrably violated the provisions of the General Act on Equal Treatment, to following the International Labour Organization's core criteria in the contract performance clauses.

The example award criteria for procurers ask bidders to outline a proposal for achieving gender equality during the performance of the contract, for instance. The criteria also include the application of gender quotas or equality quotas during the performance of the contract (e.g. with a weighting of 20 % according to the score given in the evaluation matrix). Specifying an equality quota is obligatory and part of the tender; therefore, it becomes a binding part of the contract when the tender is awarded.

#### **Legal basis**

- Directive 2014/24/EU, Article 18(2) (stating that applicable social and labour law, including the core International Labour Organization conventions, must be respected in the performance of public contracts), Article 67 (stating that award criteria may address social issues) and Article 70 (allowing the application of social or employment-related contract performance clauses).
- German Act against Restraints of Competition.

At the pre-tender stage, opportunities for GRPP arise:

- in the **needs assessment and consultation** with potential bidders, users, gender equality bodies, consultants, social partners and civil society organisations to identify the gender impacts of the contract (preliminary market consultations);
- when defining the **subject matter** of the contract to include gender aspects, in both the scope and the title of the tender;
- when choosing a **procedure** which best allows GRPP elements to be addressed;
- when deciding whether to use **reservations or lots** that might facilitate greater participation of women-owned or operated businesses (especially small and medium-sized enterprises (SMEs) and social enterprises);
- in the application of the **light regime** (the special regime set out for social and other specific services) in the procurement of social, health and education services, including criteria in relation to pay, qualifications and gender balance of the staff performing the contract, as well as quality criteria that promote better work–life balance;
- when preparing **tender documents** using gender-inclusive language and highlighting GRPP aspects.

## More on the pre-tender stage

### Preliminary market consultations

The purpose of the preliminary market study is to obtain a clearer picture of what products, works and services are available. Preliminary market consultations can be used to scope out market capacity to deliver gender-responsive outcomes, as well as to refine the contracting authority's objectives. This can be done through informal or formal consultations.

When exchanging information with specific players in the market, it is possible even at this early stage to probe to see whether they are aware of relevant differences between women and men in the context of the contract, as well as whether they have any ideas about how these differences can be taken into account during the performance of the contract. It may help to request that data about groups of people always be disaggregated by sex.

For example, in a contract for cleaning services, meetings may be held with both the beneficiaries of the service (e.g. office workers) and the cleaners employed on the authority's current contract, to identify any working practices that may improve work–life balance. This could then be discussed with prospective bidders to identify any management or logistical issues to be resolved prior to seeking tenders.

### *Opportunities*

- Identifying market capacity to respond to GRPP and at the same time raising awareness that women and men might have different needs or interests in relation to the works, goods and services to be purchased.
- Assessment of gender inequalities within the sector(s) relevant to the procurement.
- Seeking input from gender equality bodies, experts, civil society organisations or other stakeholders.
- Internal/external user consultation regarding GRPP.
- Including women-owned and -operated businesses in market consultations.

- Allowing potentially interested bidders, including SMEs and social economy enterprises that are women-owned or mainly operated by women, to build a consortium with other companies or to participate as subcontractors in the technical offers responding to the tender procedures launched.

### *Challenges*

While contracting authorities have significant freedom to engage in consultations at the pre-tender stage, they must ensure that in doing so they do not create an unfair advantage or disadvantage for any party. As preliminary market consultations are voluntary, this step is often skipped, meaning opportunities for GRPP may be missed.

### **Defining the subject matter (description of the contract)**

Contracting authorities are free to define the subject matter of their tenders. They may choose to explicitly include gender elements in the title and description of the contract, for example 'Sex-disaggregated data analysis services' or 'Supply of uniforms for women and men'.

At the pre-tender stage, contracting authorities can consider how their purchase may impact women and men differently, and address this in the subject matter. The choice of subject matter also plays a role in determining the scope of GRPP criteria that can be applied within the procedure, due to the link to the subject matter requirement (see 'Choosing the procedure').

For example, if a contract for social housing construction also includes architectural design services, then it will be possible to address gender-related aspects of design (e.g. lighting, safety, access to childcare and other amenities) within the contract.

### *Opportunities*

- Assessment of the existence of differences in the situation of women and men that can lead to inequalities if not tackled.
- Structuring contracts in a way that maximises participation, for example by using lots or options.
- Explicitly referring to gender elements in the contract title.

### *Challenges*

The subject matter may be defined by users who are not aware of gender inequalities or do not see GRPP as part of the function of procurement. Procurers may be concerned that explicitly including gender elements in the subject matter will limit competition or distract from other important aspects such as price and overall quality.

### **Choosing the procedure**

Directive 2014/24/EU defines six separate procedures for the award of contracts <sup>(24)</sup>:

- an open procedure,
- a restricted procedure,

<sup>(24)</sup> In addition to these procedures, both Directive 2014/25/EU and the financial regulation allow for use of the negotiated procedure with prior publication, and the financial regulation allows for expressions of interest in below-threshold tenders.

- a competitive procedure with negotiation,
- a competitive dialogue,
- an innovation partnership, and
- a design contest.

While GRPP may be applied in any of these procedures, the open and restricted procedures require a greater degree of certainty regarding the market's capacity to respond, as they are less flexible. This makes the use of preliminary market consultations particularly important where authorities choose to implement GRPP using these procedures.

The innovation partnership procedure allows for a structured and phased contract to be awarded to one or more partners to carry out research and development, prototyping and testing of a new product or service to meet public sector needs. The contracting authority can then purchase the outcome on a commercial scale. There is potential for this procedure to support research and development of gender-responsive services, infrastructure or technology to meet public needs.

Dividing contracts into smaller lots can help to ensure participation from a wide range of bidders, including SMEs and social enterprises and, potentially, more women-led businesses. Dividing contracts into lots does not in itself promote GRPP: additional measures such as market engagement, reservations and award criteria are needed.

### *Opportunities*

Procedures which offer greater flexibility, such as the competitive procedure with negotiation or the competitive dialogue, can facilitate GRPP as they allow procurers to engage with bidders to improve and refine offers, including on qualitative aspects such as gender-related outcomes. For services covered by the light regime, the buyer can define their own procedure, which may specifically target gender equality.

### *Challenges*

The most commonly used procedures (open and restricted) do not allow for the negotiation or refining of offers in dialogue with bidders. This means that GRPP aspects must be fully anticipated in the tender requirements. Contracting authorities may limit their ambition due to fear of poor market response.

## **Preparing tender documents**

Contracting authorities must prepare tender documents for publication prior to launching the procedure. These typically comprise several documents setting out exclusion and selection criteria, specifications, award criteria and contract terms, as well as the contract notice, which must be published on Tenders Electronic Daily if the value of the contract is above the EU thresholds.

In addition to the explicit inclusion of GRPP criteria, tender documents may influence the gender outcomes of a tender in other ways.

For example, the use of gender-inclusive language to refer to bidders and staff assigned to a contract and a statement regarding the gender impact of the contract and expected out-

comes could be important. Drawing specific attention to the GRPP criteria included, and explaining them clearly, increases the likelihood of good-quality responses to these criteria.

### *Opportunities*

- Use of the most inclusive language referring to both genders in communications <sup>(25)</sup>.
- Inclusion of a statement regarding the gender impact of the contract and expected outcomes.
- Explanation of GRPP criteria and contract clauses, highlighting these to ensure bidders are aware of them.

### *Challenges*

Many contracting authorities rely on standard tender documents, which use boilerplate terms and conditions. This can make it difficult to ensure inclusive language is used and to draw attention to the GRPP aspects. Tender documents are often long and not user-friendly, which limits the extent to which new market entrants, social enterprises or other non-traditional bidders understand and respond to the tender.

## 2.2.2. Tender stage

Contracting authorities may choose to include one or more **criteria addressing GRPP** in their tenders. The type of criteria that can be applied at each stage, as well as the evidence that can be requested, is regulated by the directives.

All **criteria must be linked to the subject matter of the contract**, meaning they must be specific to the goods, services or works that the public body is purchasing. They cannot concern general policies or practices of the bidding company.

### **Box 2. Example: Integration of the gender perspective into public procurement in the Basque Country, Spain**

#### **Stage of procurement**

Pre-procurement, procurement and post-procurement.

#### **Brief description of the context**

In 1999, gender equality was first incorporated into regional law in the third positive action plan for women in the Basque Country. Emakunde (the Basque Institute for Women) was then responsible for Regional Law 4/2005 for the equality of women and men (anticipating the Spanish equality law), which refers to the gender perspective in public procurement. Assessments of gender mainstreaming in public procurement were carried out in 2005, 2010 and 2015.

In 2013, the first guide to clauses for the equality of women and men in public contracts was produced. It included a directory of gender clauses and supporting material. In 2016, Regional Law 3/2016 on the inclusion of certain social clauses, including on gender, in public procure-

<sup>(25)</sup> See EIGE (2019c).

ment was approved. In 2018, the seventh plan for the equality of women and men in the Basque Country was approved.

In 2019, a new guide to clauses was published in line with the evolving regulatory framework on gender clauses in public procurement, which was accompanied by a toolkit and an updated collection of supporting documents.

### Objectives

This example of GRPP was created with the goal of establishing a complete legal framework and action plan to integrate the gender perspective into the work of public authorities and administrations in the Basque Country. In particular, it will guide them on (i) how to incorporate gender equality clauses into public procurement, (ii) how to monitor and evaluate the procurement and the contract delivery and (ii) help develop a set of supporting materials and structures.

### Description of the procedure

Emakunde, together with other departments of the Basque government, has developed an interinstitutional and comprehensive intervention on equality clauses in public procurement to facilitate gender mainstreaming. This involves regulations, planning, guidelines, training, coordination, advice, and monitoring and evaluation, to ensure a sustainable and effective approach. A collaborative process has been carried out with competent bodies in the area of contracting, with experts, staff from different public administrations, and private companies that are required to apply gender equality clauses. The support structure for implementing GRPP includes Emakunde and other regional gender equality bodies, the Interdepartmental Commission for the Equality of Women and Men and specialised staff in all the departments of the Basque government.

### Legal basis

- Directive 2014/24/EU, Articles 67 (on award criteria) and 70 (on contract performance conditions).
- Regional Law 4/2005 for the equality of women and men, Article 20.
- Regional Law 3/2016 on the inclusion of certain social clauses in public procurement.

At the tender stage, GRPP can use the following tactics:

- applying **exclusion grounds** to reject bidders who have violated equality obligations or who have a poor record on gender equality issues;
- applying **selection criteria** to choose bidders with the capacity to implement GRPP;
- devising **technical specifications** that reflect gender aspects of the contract, where possible;
- applying **award criteria** that target specific gender issues in the delivery of the contract and encourage innovation from bidders;
- requesting third-party **labels** or **certifications**, which attest to performance on gender equality or related areas.

## More on the tender stage

### Exclusion grounds

The contracting authority can exclude a candidate or tenderer if they have failed to meet their obligations under environmental, social or employment law. The sole purpose of the exclusion criteria is to determine whether an operator will be allowed to participate in the procurement procedure or to be awarded the contract.

It is important to clearly mention these grounds for exclusion in the contract announcement or specifications. The exclusion criteria must be included in the tender specifications through a reference to the declaration on honour (which contains the full list of reasons for exclusion). Reference can be made here to a list of relevant social laws concerning gender equality, which can be added to the specifications as an annex.

This means that tenderers or candidates who have been found guilty of discrimination on the basis of sex, or under social legislation relating to equality between women and men, can be excluded from participation for a period of 3 years.

Mentioning the possibility of exclusion is important from a preventive point of view: companies that do not comply with social legislation and do not, for example, make sure they provide equal pay to women and men for equivalent work, may have an unfair competitive advantage over companies that do so.

### *Opportunities*

Several of the exclusion grounds set out in Article 57 of Directive 2014/24/EU are relevant to GRPP:

- mandatory exclusion of candidates with a conviction for people trafficking / child labour;
- exclusion of candidates in breach of tax or social security obligations;
- exclusion of candidates in breach of obligations under Article 18(2) (which requires contracting authorities/entities to ensure that all applicable social and labour law and collective agreements are respected in the performance of public contracts).

Depending on the circumstances, other grounds, such as corruption, misrepresentation or poor prior performance, may be relevant.

### *Challenges*

Exclusion grounds are typically evaluated by way of a self-declaration by bidders. Supporting evidence is often not requested. However, EU institutions are obliged to request such evidence for tenders above the threshold laid down in the directive. Only a few Member States (e.g. Germany) formally share information between public bodies on exclusion of bidders. This can make it difficult to monitor the application of the grounds. Currently it is not clear how often or in what ways GRPP may influence bidder exclusion.

### Selection criteria

Selection criteria may address financial and economic standing, technical ability (including experience) and professional skills and qualifications.

For example, in a contract to deliver community health services, bidders could be required to demonstrate prior experience in reaching both women and men and addressing their respective health issues. Minimum annual financial turnover requirements may be lowered or removed, to allow smaller organisations and those operating as social enterprises to bid.

### *Opportunities*

The two main aspects relevant for GRPP are:

1. taking account of specific skills, experience and technical capacity to implement gender-related aspects of the contract; and
2. not erecting barriers to the participation of nontraditional contractors, which may include SMEs, women-owned businesses and social enterprises.

### *Challenges*

Selection criteria should be tailored to the specific contract and be proportionate to the requirements. However, many authorities apply a generic approach to selection and are reluctant to introduce new criteria. This may limit the extent to which GRPP selection criteria are applied. There may also be a perceived risk of legal challenge from bidders who are not selected, who may focus on any unfamiliar criteria such as those linked to GRPP.

### **Technical specifications**

Technical specifications set the mandatory requirements for the goods, services or works being purchased. They may be based on standards or on performance, or on some combination of these approaches.

For example, the Department of Gironde included specific requirements regarding gender-sensitive design in technical specifications for architectural services for secondary schools. This was evaluated as part of the tender, with input from a gender consultant. (See also Box 3.)

### *Opportunities*

Where gender elements have been included in the subject matter of the contract, the specifications will also reflect this, for example if equal participation of women and men is required in a study or research project being commissioned by a public body.

### *Challenges*

Under the financial regulation and the 2014 directives, there is no explicit authorisation for specifications to address social characteristics, unlike award criteria and contract clauses.

Contracting authorities may be reluctant to incorporate GRPP into technical specifications due to the lack of explicit authorisation for this in the directives. As tenders which do not meet specifications must be rejected, it may be seen as presenting a higher risk of legal challenge than the use of award criteria or contract performance clauses.

## Award criteria

Directive 2014/24/EU and the financial regulation provide for three award criteria: the lowest price, the lowest cost and the best price–quality ratio (called the ‘most economically advantageous tender’ in the 2004 version of the directive). For the best price–quality ratio, a certain weighting is given to the different combinations of criteria chosen: social considerations can be included in the different award criteria to be weighted, together with the price or cost and other criteria such as quality and environmental considerations.

The presence of both women and men in the team of persons performing the contract is not mentioned by the legislation as a separate award criterion. But it can be included in the criteria for the organisation, qualifications and experience of the staff who will perform the contract, either in the criteria relating to the staff’s qualifications or as a separate sub-criterion with its own score.

For example, in the Basque Country, a minimum of 5 % of the marks under the award criteria must address gender equality <sup>(26)</sup>. (See also Box 2.)

### *Opportunities*

Award criteria are an important tool for GRPP. Under the directives, public buyers have the freedom to define a range of qualitative criteria. However, these must be linked to the subject matter of the contract and allow for fair competition. Social and trading considerations are explicitly referred to, along with the qualifications and experience of the staff who will perform the contract (which might include experience with gender-related aspects). The link to the subject matter means that award criteria cannot relate to general corporate policies or practices, but must be specific to the goods, services or works being purchased (at any stage of their life cycle).

### *Challenges*

Contracting authorities may be reluctant to develop and apply GRPP award criteria for the first time if they do not know what the market response will be. Award criteria can be the subject of legal challenges if bidders disagree with the way they are evaluated and scored. In some cases, there is a reluctance to use any non-cost criteria or to assign a significant portion of marks to them. Examples of GRPP award criteria that have been successfully applied to influence the market response should help to build confidence for wider implementation.

## Use of labels/certifications

In order to verify compliance with specifications or performance under award criteria, contracting authorities may request that bidders provide a third-party label or certification.

In the GRPP context, certain labels may assist companies in implementing gender equality measures and in monitoring progress. In order for labels or certifications to be requested in tenders, they must meet certain minimum transparency standards, be based on objective criteria and be available to all operators who meet the criteria (not, for example, only those in a particular country or region).

<sup>(26)</sup> As required under the agreement approving the instruction on the incorporation of clauses for equal pay for women and men and measures against the wage gap in public procurement (<https://www.euskadi.eus/bopv2/datos/2019/05/1902185a.pdf>).

For example, in Malta, the Equality Mark has been developed, which certifies organisations that have undertaken specific actions on equal pay, sexual harassment, recruitment and promotion, employee representation and compliance with Directive 2004/113/EC <sup>(27)</sup>.

#### *Opportunities*

Contracting authorities can refer to third-party labels (e.g. on fair trade) in specifications, award criteria and contract clauses as a means of verifying social aspects. There is a requirement to accept equivalent labels, and rules apply regarding the transparency and objectivity of labels used. The development of labels that address gender concerns could significantly support the credibility and replicability of GRPP.

#### *Challenges*

Few, if any, labels exist that both meet the requirements of the directives and clearly address gender issues. Fair trade certification does in some cases include gender aspects, but is restricted to developing countries.



© 2013 Olivier Le Moal/Shutterstock

### 2.2.3. Post-tender stage

At the post-tender stage, public bodies must **apply the contract performance conditions** that they have set out in the tender documents and agreed with the successful bidder. Under Article 70 of Directive 2014/24/EU, these may include social or employment-related considerations. Recital 103 of Directive 2014/25/EU states:

*Contract performance conditions might ... be intended to favour the implementation of measures for the promotion of equality of women and men at work, the increased participation of women in*

*the labour market and the reconciliation of work and private life ...*

As with criteria applied during the tender, **contract performance conditions must be linked to the subject matter of the tender**. This means that they cannot require a company to implement general changes in its workforce or corporate practices.

**Stakeholder consultations** can also happen at the post-tender stage and are an appropriate tool for assessing a certain contract or policy, or forming partnerships for delivery.

<sup>(27)</sup> See EIGE (forthcoming).

### Box 3. Example: Gender-sensitive design of secondary schools (France)

#### Stage of procurement

- **Pre-procurement.** The selected gender consultant provided a technical note for the procurement procedure to appoint architects for the construction/renovation project.
- **Procurement.** The majority of architects responding to the tender integrated gender considerations into their proposals. The minimum focus was on recreational and sanitary areas, though some bidders applied a gender approach to all zones.
- **Post-procurement.** The gender consultant provided technical input and recommendations to the architect of the construction/renovation project.

#### Brief description of the context

The French law for equality between women and men (No 2014-873) reaffirmed the role of local and regional authorities, and the necessity for an integrated approach to gender equality (i.e. gender mainstreaming). A national decree (No 2015-761) outlined the role of the departments. The President of the Departmental Council submits an annual report on the state of equality between women and men, which lays down multiannual guidelines and programmes to promote gender equality.

The Department of Gironde adopted a multiannual action plan for gender equality in October 2016, including actions to address labour market inequality. Based on this, Gironde has included the promotion of gender equality in its plan for secondary schools: see Plan Collèges Ambition 2024 <sup>(28)</sup>.

#### Objectives of the tendering procedure

For each tender process relating to building work for a secondary school, in addition to the technical programme for construction, a note on gender was prepared.

The objective was to ensure that for all construction or renovation work:

- the use of the different areas of the school by both girls and boys was considered;
- possible gender differences in the spaces that girls and boys might occupy were highlighted;
- all solutions (e.g. furniture or intended use of different places) were aimed at bridging these gaps or, at the very least, allowed for a balanced use of the spaces;
- there was a dialogue between designers, department authorities and the gender adviser during the implementation of the work.

Inclusive design helps remove gender inequality and challenge stereotypes.

#### Description of the procedure

Based on the plans selected by the contracting authority, a technical note was produced for each school. This note contained an analysis of the proposed space based on questions of co-education and equality. Following this, recommendations were made for a more gender-sensitive layout of the overall structure of the building, the internal spaces, and its use.

<sup>(28)</sup> <https://www.gironde.fr/grands-projets/plan-colleges-ambition-2024#ginko>

## Legal basis

- Directive 2014/24/EU, Article 42 (under which contracting authorities are free to define technical specifications for performance or functional requirements, provided that the parameters are sufficiently precise to allow tenderers to determine the subject matter of the contract and to allow contracting authorities to award the contract).
- French Decree 2018-1075, Article R.2123-1, may be used when awarding contracts valued below the relevant EU threshold.

At the post-tender stage, opportunities for GRPP include:

- applying **contract performance conditions** which mandate specific actions related to gender equality;
- setting up **monitoring and reporting** on GRPP clauses, including the use of third-party audits where appropriate;
- requiring GRPP clauses to be applied by **sub-contractors**;
- enforcing compliance with GRPP clauses by applying **contractual remedies**;
- collecting **statistics** on GRPP, including percentage of contracts awarded to women-owned businesses, gender pay gap, etc.

## More on the post-tender stage

### Contract performance conditions

Contracting authorities may apply performance conditions, including economic, social or employment-related clauses, provided they are linked to the subject matter and published as part of the tender. This stage relates to how a contract should be performed. Contrary to award criteria, contract performance conditions have no impact on the assessment of tenders – they are solely linked to the execution of actual contracts. The ability of bidders to comply with such clauses is verified during the execution of the contract, not during the assessment of the tender.

#### *Opportunities*

Contract performance conditions can be a key entry point for GRPP: for example, clauses could be included that relate to recruitment, promotion, equal pay, training or gender mainstreaming in the delivery of supplies/services. In addition to basic compliance with legislation, clauses may require gender actions which are specific to the contract.

#### *Challenges*

The requirement for a link to the subject matter means that contract performance conditions cannot be used to enforce general corporate requirements on the contractor that go beyond the activities under the contract. For example, it is not possible to require contractors to train all of their staff on gender issues, only those directly involved in the delivery of the contract. In some cases, GRPP clauses may be seen as adding cost/complexity to a contract, and it may be difficult for public bodies to actively monitor and enforce clauses.

## **Subcontracting**

Article 71 of Directive 2014/24/EU aims to ensure visibility and accountability within subcontracting arrangements in public contracts. Depending on the subject matter of the contract, supply chains may stretch across the globe and involve many different sectors.

Gender issues may be particularly relevant for contracts in sectors with a high proportion of low-paid workers in developing countries, such as textiles, food production and certain manufactured goods. They may also arise in contracts that include some element of outsourcing of services, which may be provided overseas, such as call centres, IT support or translation services.

## **Reporting**

The 2014 directives and the financial regulation include a number of provisions relating to reporting on contract awards and providing statistics to the European Commission. While this includes reporting on the number of contracts awarded to SMEs, there is currently no requirement to report on gender-related aspects of contracts, for example the proportion awarded to women-led businesses.

### *Opportunities*

The rules on subcontracting aim to ensure greater transparency regarding supply chains, and can help to enforce prompt payment and fair treatment of smaller businesses. Article 71(6) of Directive 2014/24/EU allows the buyer to insist on a subcontractor being replaced where, for example, it is in breach of social or labour law. This includes equal pay and employment legislation applicable to subcontractors.

### *Challenges*

For larger or more complex contracts, subcontracting chains may stretch across the globe and cover many different sectors. While Article 71 provides a legal basis for traceability and applying GRPP throughout supply chains, in practice many public bodies lack the resources to track all subcontractors. Main contractors may not apply GRPP among their own suppliers unless they have to under the contract terms.

## **Stakeholder consultations**

Stakeholder consultations may take place during or after a contract, as well as being part of planning.

### *Opportunities*

Consultations could help to identify how GRPP provisions have operated in practice and to determine their success and whether any changes should be adopted in future tenders. It may include employees and subcontractors, as well as the main contractor, service users / beneficiaries, etc.

### *Challenges*

Stakeholders may not be aware of the gender aspects of a contract or may be reluctant to contribute their views, especially if the activities in question have not been successful or they feel loyalty to the main contractor (e.g. if they are employees or subcontractors). The desire to compete for or benefit from future contracts can impede honest assessment of how well GRPP is working.

### **Monitoring and review of contracts / strategies / action plans**

Various strategies for monitoring of public contracts can be implemented, including periodic review meetings, inspections, reporting and third-party audits.

### *Opportunities*

Where elements of GRPP are included, these may be the subject of specific monitoring activities. The results can be used to inform future tenders and strategies.

### *Challenges*

Contract managers need to be actively engaged in order to ensure follow-through on GRPP commitments that are made as part of the tender. This can be difficult where the management of the contract takes place at some distance from the procurement (e.g. where central frameworks are used) and where GRPP is not well communicated or understood.

### **Reporting and statistical information from the contracting authority**

Contracting authorities may report on GRPP to funding bodies, gender equality bodies, procurement authorities or others. They may also engage in public reporting.

### *Opportunities*

Reporting can be a motivator for GRPP, especially where targets or incentives/penalties apply.

### *Challenges*

GRPP reporting obligations do not appear to be widely established. There are opportunities to link GRPP to broader policies relating to gender equality and strategic procurement. This requires fully engaged senior managers to support specific actions in tenders to implement GRPP.

### **Measurement of the social impact of a contract/policy, including in the framework of social outcome contracting**

Measuring social impact can be a major driver of socially responsible public procurement, including GRPP.

### *Opportunities*

Linking gender outcomes to payment under the contract (as in social impact bonds) particularly incentivises ensuring that these gender outcomes are fully addressed.

### Challenges

The use of social outcome contracts in fields such as unemployment, rehabilitation of offenders and services for children and youth is becoming more and more widespread. However, to date, fewer examples are available that show how gender equality can be tackled through social outcome contracts.

#### 2.2.4. Support structure

Directive 2014/24/EU, on the governance of public procurement processes, provides a support structure for GRPP. It addresses enforcement, national reporting and statistical information, and administrative cooperation.

##### Enforcement (Article 83)

Member States are required to put in place systems to monitor the application of procurement law and to support contracting authorities in its application. No more than once every 3 years, the Commission can request national reports on the implementation of strategic public procurement <sup>(29)</sup>, which could include GRPP.

##### Challenges

The focus of enforcement activities, as well as the monitoring by the Commission, tends to be on the application of mandatory aspects of the directives (e.g. advertisement or correct use of procedures) and not on SRPP, GRPP or other voluntary aspects. So far, there is little official information on the implementation of SRPP and GRPP, outside of a limited number of case studies.

##### National reporting and statistical information (Article 85)

Member States are required to cooperate with the Commission to collect statistical information on tenders both above and below the EU thresholds. Statistics may include details of SRPP and GRPP, which would allow the product/service sectors and types of procedures where they are most commonly implemented to be mapped.



© 2019 fizkes/Shutterstock

Further development of this requirement, for example to include sex-disaggregated data, including the percentage of women-owned businesses succeeding in public tenders, could support GRPP.

##### Challenges

The level of detail in statistics collected under this requirement is unlikely to allow for effective mapping of SRPP and GRPP. These aspects are implemented via tender documents and contract clauses, but are not apparent in contract or award notices.

The availability of sex-disaggregated data on public contracts is currently very limited. This makes it difficult both to map the gender impact of public spending and to report on the effectiveness of GRPP where implemented.

##### Administrative cooperation (Article 86)

Article 86 provides for mutual assistance / information sharing between Member States on a number of topics, including the exclusion grounds and abnormally low tenders. The net-

<sup>(29)</sup> Directive 2014/24/EU, Article 83(3).

works/systems put in place for this could also support the sharing of information on SRPP and GRPP.

### *Challenges*

Information sharing on SRPP and GRPP is largely facilitated by voluntary networks (such as the

Procura+ network <sup>(30)</sup>) rather than the more official channels set out under Article 86. There are also a number of expert groups set up by the Commission, some of which consider SRPP within the scope of their work.

<sup>(30)</sup> Procura+ is a network of European public authorities and regions that connect, exchange and act on sustainable and innovation procurement, initiated and coordinated by ICLEI (<https://procuraplus.org/home/>).

## 3. Why

### 3.1. Why is gender-responsive public procurement important?

#### *GRPP can contribute to sustainable and inclusive growth in the European Union*

GRPP constitutes procurement that promotes gender equality through the goods, services or works being purchased. Public buyers are major investors in the EU, spending 14 % of its GDP <sup>(31)</sup>. Public buyers can decide to take measures to promote equality between women and men among those performing the contract.

Gender equality is not only a fundamental human right: achieving gender equality also brings tremendous socioeconomic benefits. Gender equality has strong, positive impacts on GDP per capita, which grow over time. Therefore, gender equality is a highly relevant policy measure for fostering economic growth. Improving gender equality could lead to an increase in EU GDP per capita of 6.1–9.6 % by 2050, amounting to EUR 1.95–3.15 trillion <sup>(32)</sup>.

#### *GRPP can contribute to boosting the long-term competitiveness of the EU economy*

GRPP as a tool to apply gender equality measures could lead to an increase in the potential productive capacity of the economy and better value for money. Following these developments, the EU would be able to produce more goods and services domestically, and also become more competitive in international markets <sup>(33)</sup>.

It would lead to improvements in the trade balance: EU exports would increase by 1.6–2.3 %

and imports would decrease by 0.4–0.7 % by 2050 <sup>(34)</sup>. Thus, it would help to maintain international trade as one of the key engines of EU growth, in line with the new industrial strategy for Europe <sup>(35)</sup>.

#### *GRPP can contribute to closing the gender gap and creating inclusive jobs*

GRPP can entail state agencies and contracting authorities at all levels holding market engagement events which encourage businesses and social enterprises owned and operated by women to participate in tenders, for example by explaining procedures, considering feedback and ensuring that the structure and size of contracts are appropriate to encourage maximum participation. During market pre-consultations, potential bidders, including small-sized ones, can meet and decide to create a consortium to respond jointly to a tendering procedure or to participate as subcontractors.

If through these measures more women join the labour force, they are likely to find employment and make substantial contributions to the economy. Such a move would contribute to increased earnings and reduced wage gaps for women.

The mandatory social clause, any social considerations – in particular relating to employment and training – included in award criteria or contract performance clauses, and reserved contracts represent powerful tools to increase job opportunities for (women) workers at a disadvantage and to reduce the gender pay gap. Reducing the gender pay gap can also play an important role in attracting more women to the labour force. With reserved contracts, it is also

<sup>(31)</sup> European Commission, 2017.

<sup>(32)</sup> EIGE, 2017.

<sup>(33)</sup> EIGE, 2017.

<sup>(34)</sup> EIGE, 2017.

<sup>(35)</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – A new industrial strategy for Europe, COM(2020) 102, 10.3.2020 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0102>).

possible to promote the social and professional integration of women who suffer multiple forms of discrimination (women with disabilities, migrant women, long-term unemployed women, etc.). While this provision is being used more and more to promote the social and professional integration of disabled or disadvantaged workers, gender aspects are often neglected and it is not common practice to collect data disaggregated by sex.

### *GRPP is good and fair public procurement*

GRPP provides an important opportunity to leverage public spending to pursue a fairer allocation of economic resources and improve living standards for both women and men. Promoting fair working conditions throughout the supply chain would improve the situation of women and men living in non-EU countries, too. This can only be achieved when principles such as performance orientation, transparency, accountability and participation are included with an integrated gender perspective as part of modern standards of public financial management <sup>(36)</sup>.

Integrating a gender perspective into public procurement can broaden and diversify the pool of bidders, for example by ensuring that contract opportunities are easily accessible to all potential suppliers, particularly SMEs, including those owned by women or people from ethnic minorities, as well as businesses for people with disabilities, which may have greater difficulty accessing such opportunities.

Reserved contracts or contract performance clauses may be of help here. 'Reserving' a contract means that specified businesses can bid for that particular contract. This does not mean that public authorities can favour these specified businesses generally.

In science, technology, engineering and mathematics (STEM), reaching out to the widest possible range of contractors – including, for example, businesses owned by women – may help to increase the participation of women in STEM.

In sectors dominated by women (e.g. care and social services) GRPP could help reduce barriers for men willing to access these contracts: gender equality is not just for women, it is about rebalancing, too.

### *GRPP can contribute to facilitating and strengthening institutionalisation of gender mainstreaming*

Introducing the integration of a gender perspective in the work (i.e. at the operational level) of public contracting authorities contains a significant opportunity for institutional change in their strategies, objectives and activities. It requires good collaboration between public procurers and gender equality bodies.

Such collaboration can contribute to increasing individual and institutional capabilities regarding promoting gender equality. It can also help in improving internal policies (e.g. hiring and promotion of personnel) and working conditions (e.g. by considering work–life balance for parents and carers), and lead to better tailored and high-quality services.

### **3.1.1. Challenges for gender-responsive public procurement under EU procurement law**

The EU legal framework is faced with several challenges in the implementation of GRPP:

- a lack of mandatory provisions;
- uncertainty regarding some existing rules;
- the absence of monitoring and reporting requirements.

More broadly, the promotion of gender equality as a legitimate objective is currently lacking within public procurement policy at both the EU and the national levels. This means that many public bodies are not yet aware of the possibility of addressing gender issues through procurement. Also, there might be a need for practical support for integrating a gender per-

<sup>(36)</sup> See also EIGE (2019b).

spective into public procurement. EIGE will produce a toolkit for putting GRPP into practice.

### 3.1.2. Possible new perspectives for gender-responsive public procurement

Under **EU procurement law**, reservations in public procurement do not explicitly relate to women-owned or women-managed businesses. Directive 2014/24/EU and the financial regulation only allow for two types of reservations: restricting competition (i) to economic operators whose mission is the social and professional integration of disadvantaged workers and workers with disabilities (Article 20 of Directive 2014/24/EU) and (ii) in contracts for social, health and cultural services, to organisations which have a public service mission and meet certain governance requirements (Article 77 of Directive 2014/24/EU). Sole sourcing is only possible in certain exceptional circumstances where it is not possible to hold a competition, and cannot be justified based on the desire to increase spending with certain types of businesses.

**US federal procurement law** provides for both set-asides and sole sourcing from women-owned small businesses. A set-aside award is a contract in which only certain contractors may compete, whereas a sole-source award is a contract awarded without competition.

In that regard, the EU legal framework offers less support than US federal procurement law

when it comes to affirmative action for women-owned businesses. However, such policies are unlikely to work in the absence of broader capacity building for women-owned businesses in relevant sectors to participate in public tenders.

**UN Women** uses GRPP programmes to leverage market segments of women-owned businesses. The underlying principles of the UN Women procurement process include best value for money, fairness, integrity and transparency, effective competition and the best interests of UN Women.

For UN Women, GRPP begins with understanding the barriers and challenges preventing women-owned businesses from accessing and fully participating in the corporate supply chain. It requires a commitment from top-level management to make GRPP an integral part of the firm's business practices and culture.

Should new legislation for the EU legal framework be developed, it could be of interest to consider how UN Women puts the 'best value for money' principle first in the procurement process. This principle enables the consideration of social (including gender-related), economic and environmental policy objectives in the procurement process.

It could also be of interest to consider how UN Women understands gender equality as one of the key aspects of effective competition, and in full respect of the right of women to access the EU market.

# Bibliography

## References and further information

European Commission (2017), 'European semester thematic factsheet – Public procurement' ([https://ec.europa.eu/info/sites/default/files/file\\_import/european-semester\\_thematic-factsheet\\_public-procurement\\_en\\_0.pdf](https://ec.europa.eu/info/sites/default/files/file_import/european-semester_thematic-factsheet_public-procurement_en_0.pdf)).

EIGE (European Institute for Gender Equality) (2017), *Economic Benefits of Gender Equality in the European Union – Overall economic impacts of gender equality*, (<https://eige.europa.eu/gender-mainstreaming/policy-areas/economic-and-financial-affairs/economic-benefits-gender-equality>).

EIGE (2019a), *Gender Analysis*, Publications Office of the European Union, Luxembourg (<https://eige.europa.eu/gender-mainstreaming/methods-tools/gender-analysis>).

EIGE (2019b), *Gender Budgeting*, Publications Office of the European Union, Luxembourg (<https://eige.europa.eu/gender-mainstreaming/methods-tools/gender-budgeting>).

EIGE (2019c), *Toolkit on Gender-sensitive Communication*, Publications Office of the European Union, Luxembourg (<https://eige.europa.eu/publications/gender-sensitive-communication>).

EIGE (2022, forthcoming), 'Toolkit on gender-responsive public procurement' (<https://eige.europa.eu/about/projects/gender-responsive-public-procurement-eu>).

EIGE (forthcoming), *Gender-responsive Public Procurement in the EU*.

EIGE, 'Gender Impact Assessment' (<https://eige.europa.eu/gender-mainstreaming/methods-tools/gender-impact>).

EIGE, 'Gender Mainstreaming' (<https://eige.europa.eu/gender-mainstreaming>).

Institute for the Equality of Women and Men (2018), *Manual for the integration of the gender perspective and the consideration of the equality of women and men in the framework of public procurement*, Belgium ([https://igvm-iefh.belgium.be/sites/default/files/manual\\_gender\\_perspective\\_and\\_equality\\_public\\_procurement.pdf](https://igvm-iefh.belgium.be/sites/default/files/manual_gender_perspective_and_equality_public_procurement.pdf)).

Sarter, K. (2019), 'Policy paper on public procurement and gender equality', paper commissioned by the Women's Budget Group to inform the Commission on a Gender-Equal Economy (<https://wbg.org.uk/wp-content/uploads/2019/11/Public-Procurement-and-Gender-Equality.pdf>).

## Other references

Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, p. 391) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex-3A12012P%2FTXT>).

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A Union of equality: Gender equality strategy 2020–2025, COM(2020) 152, 5.3.2020 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX-3A52020DC0152>).

Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – A new industrial strategy for Europe, COM(2020) 102, 10.3.2020 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX-52020DC0102>).

Consolidated version of the Treaty on European Union (OJ C 326, 26.10.2012, p. 13) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex-3A12012M%2FTXT>).

Consolidated version of the Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, p. 47) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>).

Departamento de Gobernanza Pública y Auto-gobierno, Resolución 42/2019, de 9 de abril, del Director de la Secretaría del Gobierno y de Relaciones con el Parlamento, por la que se dispone la publicación del Acuerdo por el que se aprueba la instrucción sobre incorporación de cláusulas para la igualdad retributiva de mujeres y hombres y medidas contra la brecha salarial en la contratación pública, *Boletín Oficial del País Vasco*, No 87 (<https://www.euskadi.eus/bopv2/datos/2019/05/1902185a.pdf>).

Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1) ([https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.094.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.094.01.0001.01.ENG)).

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>).

Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0025>).

European Parliament legislative resolution of 19 November 2013 on the draft Council regulation laying down the multiannual financial framework for the years 2014–2020 (11791/2013 — C7-0238/2013 — 2011/0177(APP)) (Consent) (2016/C 436/11) (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013AP0455&from=EN>).

European Parliament resolution of 23 October 2019 on the Council position on the draft general budget of the European Union for the financial year 2020 (11734/2019 – C9-0119/2019 – 2019/2028(BUD)) ([https://www.europarl.europa.eu/doceo/document/TA-9-2019-0038\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2019-0038_EN.html)).

Proposal for a directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, COM(2021) 93, 4.3.2021 ([https://ec.europa.eu/info/sites/default/files/aid\\_development\\_cooperation\\_fundamental\\_rights\\_com-2021-93\\_en\\_0.pdf](https://ec.europa.eu/info/sites/default/files/aid_development_cooperation_fundamental_rights_com-2021-93_en_0.pdf)).

Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32018R1046>).

## GETTING IN TOUCH WITH THE EU

### IN PERSON

All over the European Union there are hundreds of Europe Direct information centres. You can find the address of the centre nearest you at: [https://europa.eu/european-union/contact\\_en](https://europa.eu/european-union/contact_en)

### ON THE PHONE OR BY EMAIL

Europe Direct is a service that answers your questions about the European Union.

You can contact this service:

- by freephone: 00 800 6 7 8 9 10 11 (certain operators may charge for these calls),
- at the following standard number: +32 22999696, or
- by email via: [https://europa.eu/european-union/contact\\_en](https://europa.eu/european-union/contact_en)

## FINDING INFORMATION ABOUT THE EU

### ONLINE

Information about the European Union in all the official languages of the EU is available on the Europa website at: [https://europa.eu/european-union/index\\_en](https://europa.eu/european-union/index_en)

### EU PUBLICATIONS

You can download or order free and priced EU publications from: <https://publications.europa.eu/en/publications>. Multiple copies of free publications may be obtained by contacting Europe Direct or your local information centre (see [https://europa.eu/european-union/contact\\_en](https://europa.eu/european-union/contact_en)).

### EU LAW AND RELATED DOCUMENTS

For access to legal information from the EU, including all EU law since 1951 in all the official language versions, go to EUR-Lex at: <http://eur-lex.europa.eu>

### OPEN DATA FROM THE EU

The official portal for European data (<https://data.europa.eu/en>) provides access to datasets from the EU. Data can be downloaded and reused for free, for both commercial and non-commercial purposes.



<http://eige.europa.eu>



Publications Office  
of the European Union