

# Gender-responsive Public Procurement

## Defining the subject matter of the contract

Contracting authorities are free to define the subject matter of their tenders. At the pre-tender stage, you should consider how the purchase may affect women and men differently and address this in the subject matter and/or in a short description in the **contract notice**. There are two main reasons for incorporating gender aspects within the subject matter of the tender.

- 1 Visibility.** By giving your contract a title that explicitly includes gender aspects, you draw bidders' attention to the importance of these aspects (e.g. 'Sex-disaggregated data analysis services' or 'Design, build and management of a sports centre promoting equal participation').
- 2 Setting the scope.** The subject matter of the contract determines which criteria you can apply in the tender, due to the link to the subject matter requirement (see the box that follows entitled '[Link to the subject matter requirement](#)'). It is therefore important to define what you are buying in a way that includes any gender impacts linked to production or consumption of the goods or services. If you are purchasing advertising services (e.g. for a public information campaign) and want to ensure that both women and men are reached equally, the scope of the tender needs to include the provision of sex-disaggregated data about the audiences for different media channels.

In some cases, the subject matter of the tender will be only loosely defined, leaving room for the market to propose innovative ways of addressing a particular need, for example if a service is needed to help women return to the workforce, but the nature of the activities has not been defined. In these cases, you can state the gender outcomes/impacts to be achieved in the subject matter and/or short description rather than describing the specific services that are required.

Another important consideration at this stage is setting the duration of the contract or framework. In general, a longer duration will provide more opportunity to implement GRPP measures, especially when these require the contractor to put training or other resources in place and to measure impacts or outcomes. In some cases, meeting GRPP targets may be set as a condition for the extension or renewal of a contract (see "[Post-procurement stage](#)")

## **Link to the subject matter requirement**

Under the EU public procurement directives, all of the criteria applied in tenders must be linked to the subject matter of the contract. This means that they cannot concern general corporate policies or practices of bidding companies, but must be specific to the goods, services or works that are being purchased. This distinction is important when formulating **award criteria** to address gender equality issues. For example, it would be possible to have a criterion that specifically concerns **gender equality** in recruitment and staffing for the purposes of the contract being awarded. It may not be possible to award more marks to a company on the basis of its overall **gender balance**, as this would go beyond what is relevant to the contract. There is some doubt about the interpretation of the subject matter link due to limited case-law from the EU Court of Justice. In some cases, a general policy or practice may serve as evidence in relation to a more specific criterion, but it is the application to the individual contract that matters.

## **Examples of how to define the subject matter of contracts in a way that is gender sensitive**



In a contract for mobility services, the subject matter could explicitly refer to the needs of women and men, including differences regarding journey types and the use of public transport.

If a contract for construction of social housing also includes architectural design services, then it will be possible to address gender aspects of design (e.g. lighting, safety, access to childcare and other amenities) within that contract. The title and/or short description of the contract could explicitly refer to these gender aspects.

### **How to act**

When appropriate, give your contract or framework a title that explicitly includes gender aspects.

Highlight GRPP in the brief description of the tender that appears in the contract notice.

Ensure that the scope and duration of the contract/framework are sufficient to meaningfully implement GRPP, for example to allow specific targets to be set and any necessary training / capacity building to be put in place.

## **Mistakes to avoid**

Avoid assuming that all potential bidders will read the tender documents – by including gender aspects in the title and/or a short description in the contract notice, you can attract bidders with expertise in relevant areas.

In some cases, contract notices are completed separately from the tender documents and by a different individual or team. In these cases, it is particularly important to ensure that gender aspects included in the tender documents are also reflected in the notices.