

# Gender-responsive Public Procurement

## 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 with a high proportion of low-paid workers in developing countries, such as those in the textiles, food production and certain manufactured goods industries. It may also arise in contracts that have an outsourced service element that may be provided remotely, such as call centres, IT support and translation services.

Under Article 71(6) of Directive 2014/24/EU, contracting authorities can require a subcontractor to be replaced when there is evidence of non-compliance with any of the exclusion grounds, including applicable social and labour laws and collective agreements<sup>[1]</sup>.

As highlighted in Section 5.1.2 on preliminary market consultation, subcontracting may also provide an opportunity for small and/or social enterprises to participate in public contracts. This can be a way of increasing women's participation in public contracting, as research shows that a high proportion of women-owned businesses are SMEs and/or social enterprises. Contracting authorities can set requirements to ensure the fair treatment of subcontractors, for example regarding prompt payment and sharing of contract data.

## Examples of tendering procedures using subcontracting for GRPP

In **Poland**, the statistics agency applies contract performance conditions requiring compliance with the ILO core conventions throughout the supply chain when it purchases software. This aims to ensure equal remuneration and non-discrimination based on gender grounds, among other considerations. The contractor is obliged to ensure that all subcontractors and suppliers engaged in the implementation of the contract observe the ILO core labour standards.

In **Germany**, a government agency included several social aspects as part of the technical specifications when procuring a shuttle service for its employees. These social aspects encompassed fair pay, the promotion of work–life balance, diversity and inclusion, and access to training. The agency required the social aspects to also be applied when using subcontractors.

## **Mistake to avoid**

Avoid simply assigning responsibility to the main contractor, as this may be insufficient to ensure GRPP requirements are applied throughout the supply chain. Instead, seek information about subcontractors during the tender procedure and consider whether joint liability is appropriate in respect of GRPP requirements.

### **Footnotes**

[1] Please note that, under Article 136(9) of the financial regulation, the replacement of a subcontractor can be required when the subcontractor is found to not comply with any of the exclusion grounds. However, as compliance with social/labour law is not a ground for exclusion under Article 136, it is not relevant to cite it here.