

Gender-responsive public procurement



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

What is gender-responsive public procurement

Definition of gender-responsive public procurement (GRPP)

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.

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 ([1]). 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 ([2]). 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' ([3]). 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.

Context and purpose

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]).

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 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 ([10]).

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 ([11]).

GRPP 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 **T** 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.

The EU legal and policy framework

GRPP has a basis in the financial regulation (Regulation (EU, Euratom) 2018/1046) ([12]) and the EU legal framework for public procurement. The legal framework has evolved into a comprehensive set of rules and principles governing the award of public contracts ([13]). 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’ ([14]). 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) ([15]).

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) ([16]). 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 ([17]).

Application of GRPP 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.

Enabling factors

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 ([18]).

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 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 ([19]).

How does GRPP 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 ([20]).

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 ([21]).

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 ([22]). 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 ([23])?

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.

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.

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.

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 procurement 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 (iii) 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.

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.

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 ([28]).

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.

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 subcontractors;

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.

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 ([29]), 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. 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 networks/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 ([30])) 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.

Why is GRPP 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 ([31]). 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 ([32]).

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 ([33]).

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 ([34]). 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 ([35]).

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 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 ([36]).

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.

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

Possible new perspectives for GRPP

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.

Further information

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Endnotes

^[1] 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).

^[2] EIGE, 2019b.

^[3] Sarter, 2019.

^[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.

^[10] Institute for the Equality of Women and Men, 2018.

^[11] Institute for the Equality of Women and Men, 2018.

^[12] 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>).

^[13] 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).

^[14] COM(2020) 152.

^[15] 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).

^[16] 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.

^[17] 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 433I , 22.12.2020, p. 28–46), Point 16 (f) of IIA of 16 December 2020.

^[18] The enabling factors found in this study are similar to those of gender budgeting (see EIGE (2019b)).

^[19] 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.

^[20] See EIGE (forthcoming).

^[21] For full descriptions of the examples and an in-depth description of the legal grounds, see EIGE (forthcoming).

^[22] See EIGE (2019a) for more information about gender analysis and its use as a gender mainstreaming tool.

^[23] Institute for the Equality of Women and Men, 2018.

^[28] <https://www.gironde.fr/grands-projets/plan-colleges-ambition-2024#ginko>

^[29] Directive 2014/24/EU, Article 83(3).

^[30] 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/>).

^[31] European Commission, 2017.

^[32] EIGE, 2017.

^[33] EIGE, 2017.

^[34] EIGE, 2017.

^[35] 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>).

^[36] See also EIGE (2019b).