

Gender-responsive Public Procurement

Legal framework cross-references gender equality and public procurement

Public procurement and the promotion of gender equality are often seen as two separate issues. General provisions on **gender mainstreaming** and/or **gender budgeting** make, at best, little or, at worst, no reference to GRPP.

Laws that specifically mention the use of GRPP as a tool to promote gender equality not only provide legal certainty on its use (usefulness), but also give GRPP visibility and make the all-important and natural link between gender equality and public procurement.

Spanish public sector law: The best example of national procurement law promoting gender equality as an objective

Spanish Law 9/2017 on public sector contracts ^[1] contains the following relevant provisions.

A description of the subject matter of the contract in relation to social criteria (Article 99). The inclusion of social criteria will draw bidders' attention to the importance of social considerations and will determine the applicable criteria in their contracts.

The mandatory and cross-cutting duty to include social criteria (not specifically gender criteria) in all public contracts (Article 1.3). The obligation to include social criteria is specified in Article 202 (it is mandatory to include at least one special performance condition of a social nature) and in the fourth additional provision (i.e. relating to contracts reserved for organisations employing persons with disabilities).

The tender budget broken down by sex (Article 100.2). Public spending can have different impacts on women and men so, by using data broken down for women and men, such inequalities can be assessed and addressed.

Labels or certifications relating to gender equality (Article 127). To verify compliance with specifications or performance under award criteria, contracting authorities may request that bidders provide a third-party label or certification.

The prohibition to contract companies with more than 250 workers that fail to comply with the obligation to have an equality plan (Article 71). Tenderers or candidates who have violated national law can be excluded from participation in the tendering procedure.

Technical capacity in social matters (Article 90). Compulsory requirements to be met by the potential suppliers to be considered in the procurement procedure can include social considerations.

Award criteria with a gender perspective (Article 145). Award criteria determine the outcome of a tender and are a key tool for addressing gender issues in the delivery of public contracts. Tie-breaking criteria relating to equality between women and men (Article 147). Tie-breaking criteria can contribute to GRPP by taking account of specific skills, experience and the technical capacity to implement gender aspects of the contract and by not erecting barriers to participation for 'non-traditional' contractors, which may include small and medium-sized enterprises (SMEs), women-owned businesses and social enterprises.

Special implementation conditions relating to gender equality (Article 202). The requirements to be fulfilled by the supplier during the execution of the contract can include gender considerations.

Other examples of gender equality and public procurement legislation

Examples of gender equality legislation

In **Spain**, Organic Law 3/2007 for effective equality between women and men ^[2] includes references to and guidelines on the inclusion of the gender perspective in public contracting in Articles 33 and 34.

In **France**, Law No 2014-873 for real equality ^[3] of 4 August 2014 (Articles 16 and 31) obliges local authorities to take action to promote gender equality within all of their policies. Budgetary decisions require a **gender audit** and companies may be excluded from receiving benefits if they do not meet their legal obligations to promote gender equality issues in public procurement.

Examples of public procurement law

In **Austria**, since 2018, the national procurement law ^[4] has included the employment of women as an example of a social consideration that can be addressed in procurement procedures (Section 20, paragraph 6, and Section 193, paragraph 6).

In **Portugal**, the public procurement code ^[5] has a specific clause stating that gender equality, along with social responsibility and the environment, should be considered in the performance of the contract (Article 42, point 6). This creates an opportunity for the inclusion of GRPP in public procurement contracts.

How to act

Identify relevant national (and regional) laws on public procurement and gender equality to determine which gender equality considerations are allowed and/or required.

Explicitly mention gender equality as an objective to be achieved when revising public procurement laws.

Clearly identify GRPP as a tool to promote gender equality when revising gender equality laws.

Footnotes

[1] See the full text online (<https://www.boe.es/eli/es/l/2017/11/08/9/con>).

[2] See the full text online (<https://www.boe.es/buscar/act.php?id=BOE-A-2007-6115>).

[3] See the full text online (https://www.legifrance.gouv.fr/loda/id/JORFTEXT000029330832?init=true&page=1&query=Loi+2014-873+%C3%A9galit%C3%A9+r%C3%A9elle&searchField=ALL&tab_selection=all).

[4] See the full text online (<http://blog.imag-gendermainstreaming.at/index.php/de/2018/09/14/die-frauen-und-gleichstellungsfoerderung-im-oesterreichischen-vergaberechtsreformgesetz-2018/>).

[5] See the full text online (http://www.base.gov.pt/mediaRep/inci/files/ccp2018/CCP-DL_111-B.pdf).