

Gender-responsive Public Procurement

Post-procurement stage

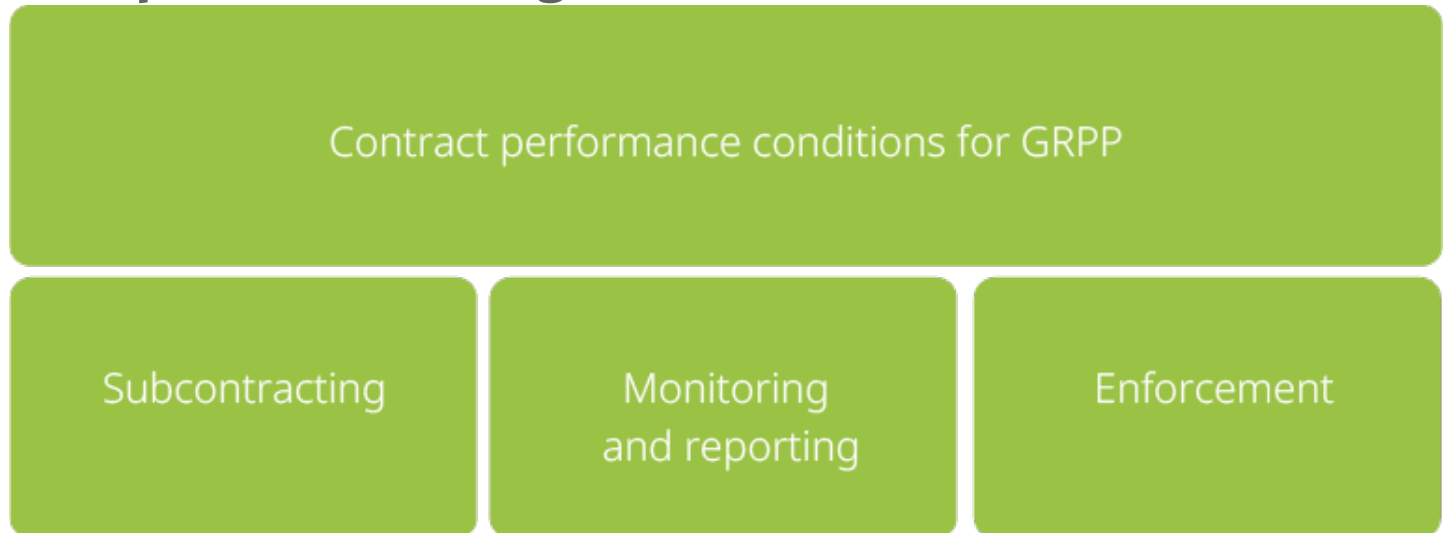


Figure 4. GRPP at the post-procurement stage

Contract performance conditions

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, these may include (inter alia) social or employment-related considerations.

Recital 98 of Directive 2014/24/EU states that:

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 ...

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

However, 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; instead, this requirement could apply only to those directly involved in the delivery of the contract. In some cases, GRPP clauses may be seen as adding costs/complexity to a contract, and it may be difficult for public bodies to actively monitor and enforce clauses. To avoid this, contract performance clauses related to GRPP should be introduced as early as possible in the tender procedure, ideally during pre-procurement market engagement.

It should be noted that the financial regulation provides for the use of model contracts, which may limit the ability to introduce contract performance clauses linked to GRPP.

Examples of measures to promote gender equality by the means of contract performance clauses

In **Austria**, the city of Vienna requires bidders to select activities from a catalogue of measures that they will implement during the performance of the contract. The measures are grouped into the following categories: (1) the promotion of women through recruitment and career advancement, (2) the promotion of women through qualifications, (3) the improvement of work–life balance and (4) structural actions. This measure applies to service contracts with a value over EUR 50 000, to bidders with more than 20 employees and when contracts run for at least 6 months. Failure to implement the agreed measures would result in a financial penalty under the contract.

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

Example of tool: Bidder declaration on the implementation of work–life balance activities during the performance of a contract

In **Germany**, the state of Berlin has developed a self-declaration checklist of activities for potential bidders covering the advancement of women and/or the promotion of work–life balance.

Companies with more than 10 employees are obliged under a contract performance condition to implement the activities in the self-declaration checklist; the number (0–3) of activities that needs to be undertaken depends on the number of employees. This approach is well established in the state of Berlin and is now applied to thousands of its contracts every year.

Bidders choose from 21 different activities to be implemented during the performance of a contract. These range from 'Providing appropriate support and flexibility in the workplace for employees who have parenting and caring responsibilities' to 'Offering internships for girls and young women, especially in professions where women are under-represented'. Bidders must also confirm in writing that they will pass on the responsibility for these activities to any subcontractors.

Other contracting authorities could draw inspiration from this tool example, requiring their bidders to implement activities to foster work–life balance and the advancement of women in the workplace during the performance of a contract.

How to act

Use the checklist ([Tool 12](#)) to develop and apply GRPP contract performance conditions that are appropriate to each specific contract.

Review and compare the progress made in implementing GRPP using different types of conditions (e.g. targets, incentives and penalties) to decide which strategy to focus on.

Mistakes to avoid

Contract performance conditions should always be appropriate for the specific contract. Therefore, avoid relying on generic or standard GRPP terms without considering their relevance.

Avoid assuming that all bidders will understand concepts/terminology relating to gender equality, gender mainstreaming, etc. Provide definitions and examples wherever possible.

GRPP conditions should include a clear allocation of responsibility for implementation, monitoring and reporting, as well as consequences for non-compliance. Avoid adding conditions without clear responsibility being attributed for these aspects.