

Gender-responsive Public Procurement

Who is this toolkit for?

This practical toolkit for implementing gender-responsive public procurement (GRPP) in the EU context is designed for contracting authorities at all levels (national, regional and local), including EU institutions, bodies and agencies. It is also designed to be useful to policymakers and practitioners working towards gender equality and gender mainstreaming, at both the EU and the national levels.

The toolkit can also be an important point of reference for other stakeholders such as non-governmental organisations (NGOs) and gender equality experts to support advocacy activities such as awareness raising about GRPP.

Although not specifically targeted at potential bidders, the toolkit can provide them with inspiration and guidance on how to address gender considerations while preparing a technical offer.

The toolkit is structured in such a way that each target group is guided towards the places in the procurement cycle where they could apply GRPP. For each step of the procurement process, users can access a variety of tools, with real-life examples given on how GRPP is applied and how the tools can be used.

Note on GRPP under the financial regulation^[1]

This toolkit reflects the legal framework for GRPP under the 2014 EU procurement directives and applicable principles set out in the Treaty on the Functioning of the European Union (TFEU) [2]. For the most part, the same opportunities and restrictions apply under Title VII and Annex I of the financial regulation, which regulate procurement by EU institutions, and under the general budget of the EU. For example, Article 166 of the financial regulation allows for preliminary market consultation and requires compliance with applicable environmental, social and labour law obligations in the same way as Article 18(2) of Directive 2014/24/EU [3]. Article 21 of Annex I of the financial regulation allows social aspects to be addressed in award criteria, as does Article 67 of Directive 2014/24/EU. However, there are several differences in the provisions that are relevant for GRPP:

The financial regulation does not include the possibility to reserve contracts for sheltered workshops, employment programmes or social enterprises.

The qualifications and experience of staff cannot be an award criterion under the financial regulation; they can only be a selection criterion.

The financial regulation provides for the use of model contracts, which may limit the ability to introduce contract performance clauses linked to GRPP.

In other respects, the opportunities for GRPP under the procurement directives presented in this toolkit should be considered equally relevant under the financial regulation.

Note on the legal and policy framework for gender equality in the EU

Gender equality is a fundamental value of the EU and is enshrined, in particular, in the following legal and policy documents.

Articles 2 and 3(3) of the founding Treaty on European Union (TEU) [4], Articles 21 and 23 of the Charter of Fundamental Rights [5], and Articles 8, 10, 19 and 157 of the TFEU call for equality between women and men. Article 8 of the TFEU explicitly requires the Union to 'eliminate inequalities and promote equality between women and men through all its activities' (gender mainstreaming).

The EU gender equality strategy for 2020–2025 sets objectives for ending gender-based violence, challenging gender stereotypes, closing gender gaps in the labour market, achieving equal participation across different sectors of the economy, addressing the gender pay and pension gaps, closing the gender care gap and achieving gender balance in decision-making and in politics. The strategy pursues a dual approach of gender mainstreaming combined with targeted actions, and intersectionality is a horizontal principle for its implementation. While the strategy focuses on actions within the EU, it is aligned with the EU’s external policy on gender equality and women’s empowerment.

As one of the first deliverables of the strategy, the Commission proposed binding measures on pay transparency under the proposal for a directive on pay transparency, which included an article on equal pay matters in public contracts and concessions.

The strategy also commits that the Commission’s guidance on socially responsible public procurement will fight discrimination and promote gender equality in public tenders. This can be seen in the second edition of the *Buying Social* guide ^[6].

Footnotes

[1] 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.

[2] Consolidated version of the Treaty on European Union, OJ C 326, 26.10.2012, p. 13.

[3] 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.

[4] Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p. 47.

[5] Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391.

[6] European Commission, 2021a.