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Promoting gender equality through public procurement

CHALLENGES AND GOOD PRACTICES

OECD

Introduction

1. Governments procure large amounts of goods and services to implement policies and deliver public services. Public procurement strategies, practices and systems can directly affect the quality of life and wellbeing of citizens. Through gender-responsive public procurement policies and practices governments and public buyers can promote gender equality and encourage suppliers to improve their performance on women's empowerment in order to use public procurement as an instrument to advance gender equality. Indeed, significant gender-based inequalities in terms of wages or access to health or education still exist around the world. Although women now outpace men in education in most OECD countries and have made great strides toward equal rights, gender gaps persist. Women are less engaged in paid work, and when they are, they are paid less. Women advance more slowly in their careers, live on less income, and own fewer businesses. Women are under-represented in public office, they are in the minority on boards and in boardrooms, and are more likely to work in the precarious informal economy.

2. Women are also more vulnerable to external shocks, as the recent COVID-19 pandemic showed (OECD, 2020^[1]). They have been disproportionately affected by the economic and social fallout from the pandemic, as the pandemic exacerbated pre-existing structural inequalities and gender norms (United Nations, 2020^[2]). The pandemic's impact on women is due to three main factors: women are strongly represented in frontline occupations in the health and care sectors, they have suffered disproportionately from job loss and reduced hours, and they have taken on a disproportionate share of unpaid work at home compared to men. Cutting across these factors is the inequitable sharing of paid and unpaid work, which hinders women's ability to access quality jobs and social safety nets. In addition, women have suffered from a higher incidence of domestic violence during lockdowns (Wenham, 2020^[3]). The COVID-19 crisis may even erode some of the gains made in gender equality in G20 labour markets in recent years (OECD ILO, 2020^[4]).

3. At the present pace of change, achieving global economic gender parity will take 257 years (World Economic Forum, 2021^[5]). At the 2014 Summit in Brisbane, G20 leaders committed to reducing the gender gap in labour force participation by 25 per cent compared to 2012 by the year 2025 (the 25x25 goal). A 2019 progress report on the implementation of this commitment highlighted that a range of policy actions are being taken in G20 countries to foster greater gender equality, including through public procurement policy. Indeed, various government policies could play a significant role in helping accelerate women's economic empowerment (OECD ILO, 2020^[4]).

4. As public procurement represents a significant portion of GDP (in 2019, around 12.6%) across OECD countries (OECD, 2021^[6]), governments often use it as a strategic governance tool to achieve broader policy objectives, to show leadership, and to promote change in the private sector (OECD, 2019^[7]). For example, this buying power gives governments significant leverage for promoting more responsible production and consumption of goods and services (OECD, 2020^[8]). This, in turn, supports sustainable growth, ensures value for money and helps governments meet commitments under the 2030 Agenda for Sustainable Development (United Nations, 2015^[9]).

5. This paper presents an approach for how governments and public buyers can use their purchasing power to promote gender equality and encourage suppliers to improve their performance on gender

equality and women's empowerment. It explores the different ways gender considerations can be integrated into public procurement policies and processes, and discusses the challenges that both policy makers and procurement practitioners face in promoting gender equality through public procurement.

Key policy messages

- Governments' purchasing power can be used to promote gender equality and encourage suppliers to improve their performance on women's empowerment.
- Using public procurement as a policy tool to promote gender equality requires public buyers to be open to finding innovative solutions and approaches. They must not only apply a gender-sensitive approach in their procurement decisions, but also be able to deal with the multidimensional challenges of gender-based inequalities.
- While public procurement can be used to promote gender equality, both policy makers and practitioners should always first evaluate whether public procurement is the right tool to integrate gender-based considerations. Given that public procurement is now used to achieve a wide number of strategic outcomes, it is often hard for procurement practitioners to determine which specific outcome should be targeted in each procurement opportunity.
- Greater investment should be made in the pre-tender phase of the public procurement cycle, to prepare the entire tender process and help ensure that longer-term benefits are achieved. Better management of the procurement cycle as a whole is crucial for gender-inclusive procurement.
- Successful gender-responsive procurement requires involving and engaging different stakeholders as well as strengthening the capacity of the procurement workforce. Furthermore, it is important that potential bidders clearly understand the strategic priorities of both the national government and the individual public buyers, so that they can design their bids and adjust their business operations and practices accordingly.
- While a number of countries have policies and regulations to stimulate gender-sensitive public procurement, there is still an implementation gap, amplified by a lack of knowledge and data, a lack of clear evaluation mechanisms, and a lack of understanding of gender-promotion practices.
- Opportunities for improving coherence among different policy areas should be also explored. Procurement is unlikely to be the most innovative area in terms of gender mainstreaming and gender promotion, but it can have real impacts when a universal gender mainstreaming tool is applied to all policy areas.

1 Used strategically, public procurement can contribute significantly to a gender-inclusive recovery after COVID-19

6. The COVID-19 pandemic hit all OECD and non-OECD economies hard and has raised new barriers to building inclusive and prosperous economies and societies all around the world. Pre-existing gender gaps have amplified the crisis asymmetrically for men and women (OECD, 2020^[10]). Therefore, gender-inclusive recovery strategies and practices will be critical to prevent long-term scarring in the labour market (OECD, 2021^[11]).

7. Governments have an unprecedented opportunity to build more resilient and gender-equal economies by investing in inclusive workplaces, creating more equitable care systems, promoting women's rise to leadership positions, applying a gender lens to reskilling and redeployment, and embedding gender parity into the future of work. The Global Gender Gap Report 2021 suggests that public policies should focus proactively on overcoming occupational segregation by gender (World Economic Forum, 2021^[5]).

8. Most public investments and spending linked to the implementation of recovery packages will happen through public procurement.

9. Gender mainstreaming has been embraced internationally as a key strategy for realising gender equality. It involves the integration of a gender perspective into the preparation, design, implementation, monitoring and evaluation of policies, regulatory measures and spending programmes, with a view to promoting equality between women and men, and combating discrimination.

10. Gender-inclusive public procurement involves the introduction of gender requirements and considerations into public procurement policies and practices, in order to use public procurement as an instrument to advance gender equality. Gender equality refers to the state in which access to rights and opportunities are unaffected by the gender of the person (OECD, 2019^[12]). Providing women and girls with equal access to education, health care, decent work, and representation in political and economic decision-making processes is an underlying goal of gender equality, and will fuel sustainable economies and benefit societies.

11. Integrating gender considerations into different policy areas, including public procurement, mutually reinforces gender-based policy actions across government departments and agencies, creating synergies towards achieving agreed objectives (NAPS, 2018^[13]).

12. The 2015 OECD Recommendation of the Council on Gender Equality in Public Life promotes a government-wide strategy for gender equality reform, and provides governments with clear, timely and actionable guidelines for effectively implementing gender equality and gender mainstreaming initiatives (OECD, 2015^[14]).

13. Similarly, the European Commission has produced an EU Gender Equality strategy for 2020-2025 and issued guidance on how socially responsible public procurement can be used as a tool to fight discrimination and promote gender equality in public tenders (European Commission, 2020^[15]), (European Commission, 2021^[16]).

14. Furthermore, the integration of gender considerations in public procurement aligns with a number of international commitments. For instance, the 2030 Agenda for Sustainable Development states that countries are expected to mainstream gender equality across all Sustainable Development Goals (SDGs) and targets, including in the promotion of sustainable public procurement practices, in accordance with national policies and priorities (SDG 12.7) (United Nations, 2015^[9]).

15. Globally, there is still a 32% average gender gap in terms of access to health, education, politics and economics. The Global Gender Gap Report (2018^[17]) shows that, on average globally, the wage gap between men and women is 37%.¹ This income gap not only highlights persistent differences in pay but also suggests that economic power is still typically in the hands of men. Men remain a household's primary economic reference point, often maintaining control of financial assets, although women may have indirect influence on consumer spending. Women have as much access as men to financial services in just 60% and to land ownership in just 42% of the countries assessed. Also, among the 29 countries for which data are available, women spend, on average, twice as much time on housework and other unpaid activities than men (World Economic Forum, 2018^[17]).

16. Promoting an understanding of how public procurement can contribute to gender equality can help decrease this gender gap and increase the uptake of gender-based procurement policies (OECD, Forthcoming^[18]). The public procurement cycle can be enhanced by integrating gender equality and diversity considerations in public procurement regulatory frameworks and systems; in mechanisms to ensure equal access; in the types of data that are being collected; in performance measurement frameworks; and in efforts to foster effective stakeholder participation. Boosting gender equality and inclusiveness expertise among public procurement officials can also help make the public procurement cycle more inclusive.

17. Gender-inclusive procurement policies could also mitigate economic and business risk by making supply chains more diverse. The recent COVID-19 pandemic showed the fragility of supply chains and reinforced the need for supply chain diversification.

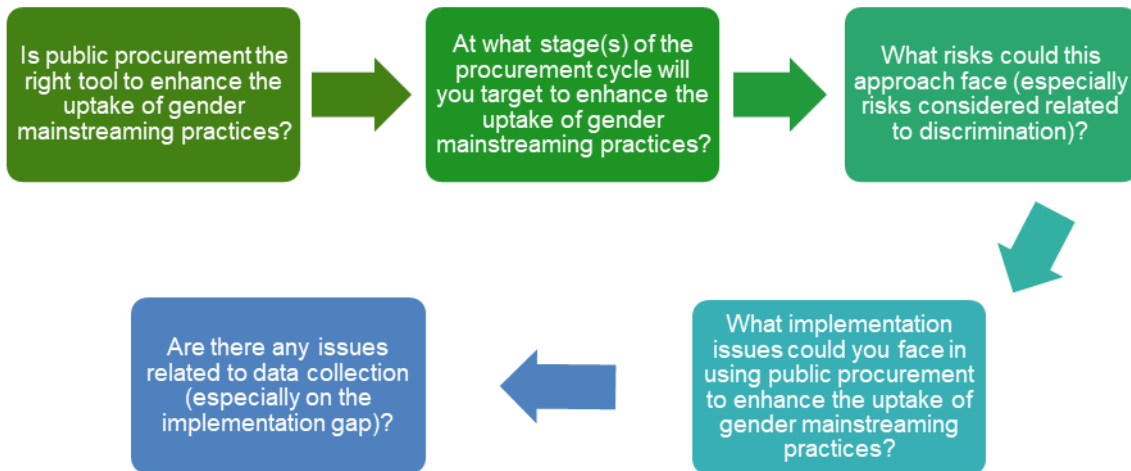
Is public procurement the right approach?

18. While public procurement can be used to achieve strategic goals in the area of gender equality, both policy makers and practitioners should always first evaluate whether public procurement is the right, or the only, tool for integrating such gender considerations. Given that public procurement is now used to achieve a broad range of strategic outcomes, it is often hard for procurement practitioners to determine which specific outcome should be targeted in each procurement opportunity.

19. Countries need to better assess whether procurement is the right approach to advance gender mainstreaming (See Figure 1). The OECD Recommendation on Public Procurement calls on countries to evaluate the use of public procurement as one method of pursuing any policy objective in accordance with clear national priorities, balancing the potential benefits against the need to achieve value for money. Both the capacity of the procurement workforce to support the targeted policy objectives and the burden associated with monitoring progress in promoting such objectives should be considered (OECD, 2015^[19]). The results of this analysis might differ from one country to another, as the national context, regulatory frameworks and political commitment might play a key role, and can vary among countries.

¹ Gender wage gap is the average difference between the remuneration for men and women who are working.

Figure 1. Questions to ask when considering whether to use public procurement for gender mainstreaming

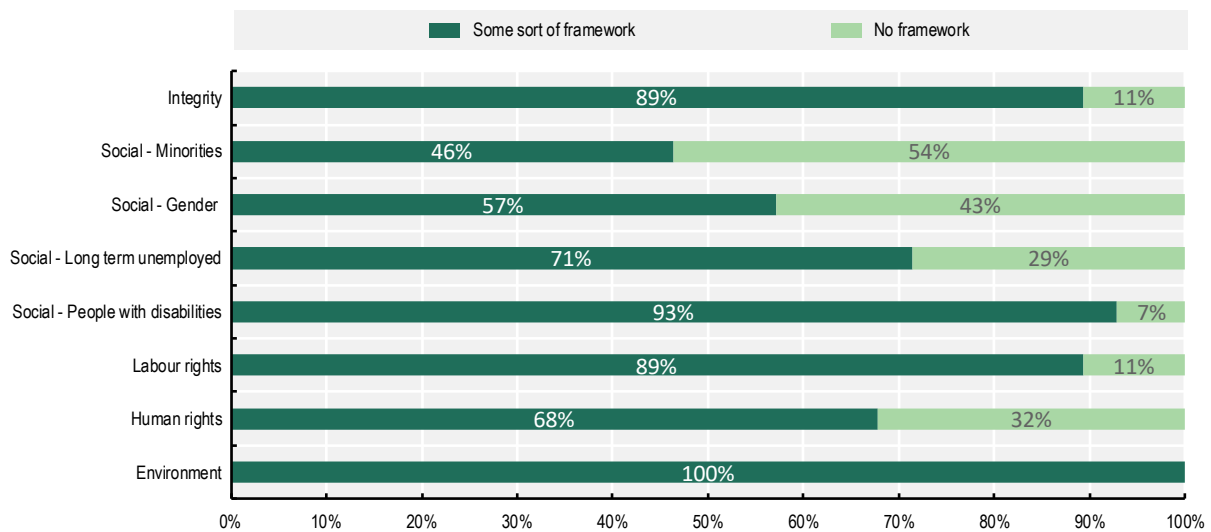


Where do countries stand with incorporating gender considerations into public procurement?

20. Recent OECD analysis shows that, while almost all OECD countries have already developed strategic and/or regulatory frameworks for including integrity and environment-related considerations in public procurement, strategic objectives² related to social issues (such as considerations related to long-term unemployed people, people with disabilities, minorities, gender) tend to be less represented in these type of frameworks. Currently, 57% of the countries (that replied to the survey) that have a framework on strategic objectives in public procurement also include gender-related considerations (Figure 2). Even if this percentage is quite high compared to other social considerations, such as 46% for minorities, social issues continue to be an area requiring further development by governments (OECD, 2020^[8]).

² The analysis covered the following eight strategic objectives: environmental standards, human rights, labour rights, inclusion of minorities, long-term unemployed people and people with disabilities, gender mainstreaming and integrity standards.

Figure 2. Share of countries with any type of framework supporting various strategic objectives in public procurement



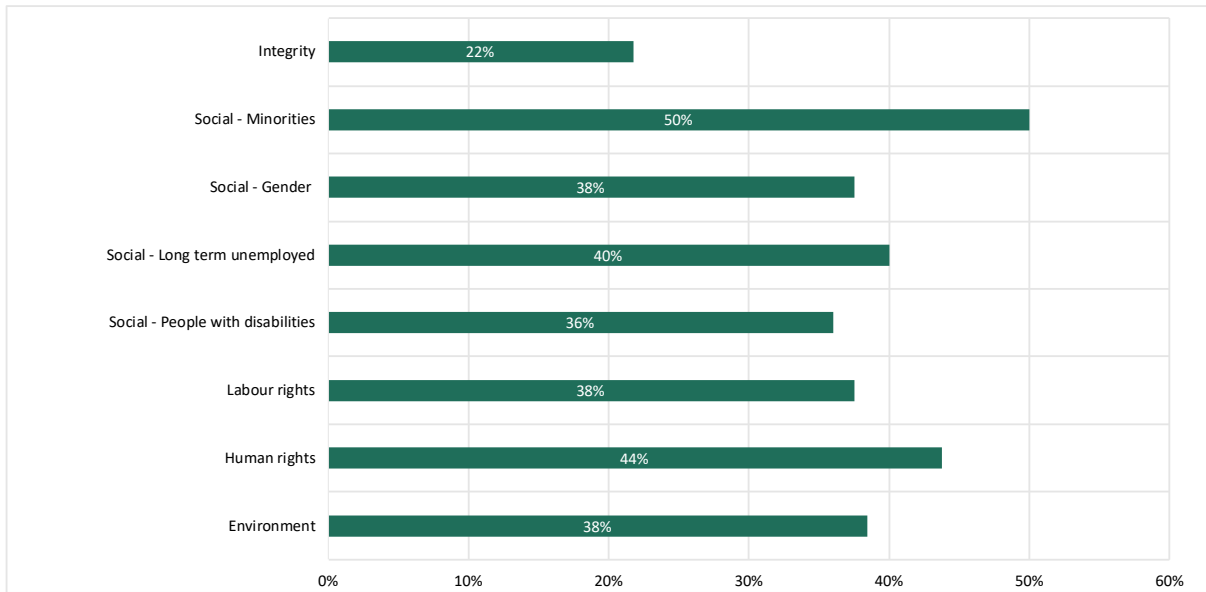
Note: Based on data from 28 countries; either regulatory or strategic framework³. Data for Austria, Chile, Greece, Iceland, Ireland, Luxembourg, Portugal, Turkey, the United Kingdom and the United States are not available.

Source: OECD (2020) Survey, Leveraging Responsible Business Conduct through Public Procurement

21. While some countries have made significant progress in incorporating gender provisions into their public procurement opportunities, a number of challenges and limitations in this area remain (United Nations, 2015^[9]). The above-mentioned OECD research also shows that this gap can be explained by several factors, but governments have identified the lack of clear understanding of how to implement gender-related considerations into public procurement policies and practices as a main challenge. This challenge applies not only to gender-related considerations, however, but to social considerations in general, as Figure 3 shows. The lack of understanding of how to implement gender-related issues represents 38% of the responses, while the inclusion of minorities, 50% (OECD, 2020^[8]).

³ A *regulatory framework* is defined as a system of rules such as laws, decrees, cabinet directions or any other legal document that governs and regulates specific policies. A *strategic framework* is defined as a high-level document approved by national authorities, such as parliament and government that sets out a country's policy goals and ambitions for a specific sector or area of public policy such as health care or the environment. Strategic frameworks can also include targets, roadmaps and action plans.

Figure 3. Lack of clear understanding of how to implement strategic objectives through public procurement



Note: Based on data from 28 countries. Data for Austria, Chile, Greece, Iceland, Ireland, Luxembourg, Portugal, Turkey, the United Kingdom and the United States are not available.

Source: OECD (2020) Survey, Leveraging Responsible Business Conduct through Public Procurement

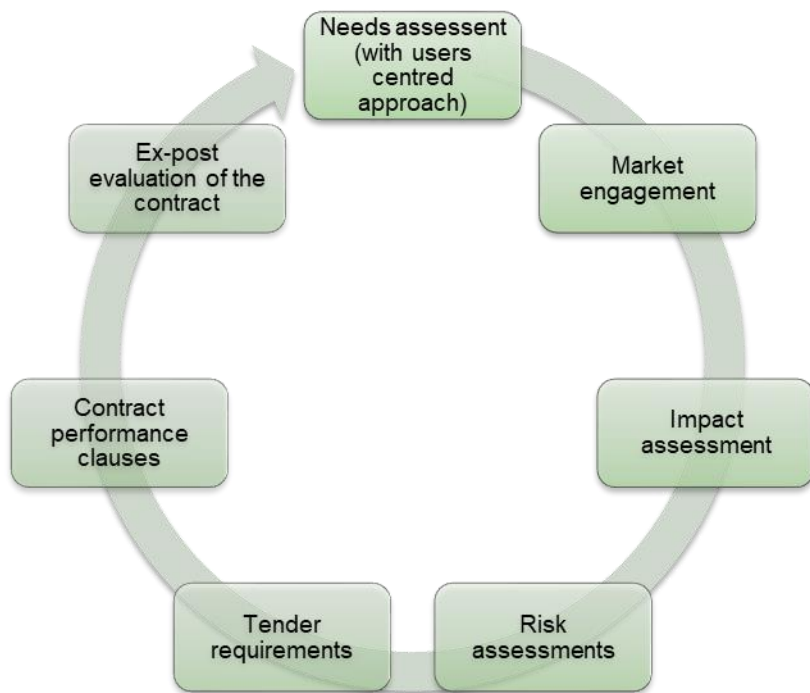
22. However, even in those countries where the strategic or regulatory framework includes gender-related considerations or requirements for public procurement, these provisions are unlikely to apply to sub-contractors or the full supply chain in a mandatory way. Voluntary application is more frequent, both for sub-contractors and for the supply chain. Only 7% of the countries require the application of their frameworks on gender considerations to the whole supply chain (OECD, 2020^[8]).

2 How can public procurement be used to advance gender equality?

23. Gender considerations can be integrated into public procurement processes through different mechanisms and tools, and at different stages of the procurement cycle:

- at the preparatory stage, during needs analysis (with users-centred approach) and market engagement; within impact assessments;
- at the tender stage when applying the tender requirements (such as technical specifications, grounds for exclusion and/or selection criteria, award criteria, and in some jurisdictions set asides and bid preferences) and
- at the contract execution or post-procurement stage with the contract performance clauses and ex-post evaluation of the contract (see Figure 4).

Figure 4. Mechanisms and tools to integrate gender considerations in public procurement



24. Using public procurement as a policy tool to promote gender equality requires public buyers to be open to finding innovative solutions and approaches, not only to be more gender-focused in their procurement decisions, but also to address complexity, and, in particular, multidimensional challenges and objectives.

25. Greater investment should be made in the pre-tender phase of the public procurement cycle, to prepare the entire tender process and help ensure that longer-term benefits are achieved. Better management of the procurement cycle as a whole is crucial for strategic public procurement in general, and for gender-inclusive procurement in particular. The pre-tender stage is an important foundation for decision making, assessing the needs of the end-users, and understanding the market structure and capacity in terms of available solutions to beneficiaries' needs. Public buyers could apply gender-inclusive lens during these pre-tender activities.

26. Applying innovative and agile approaches⁴ in public procurement can also further gender equality goals, as they are based on principles such as simplicity, quick iteration, and close collaboration with citizens and end-users. Applying innovative and agile approaches in public procurement can also create a regular feedback loop that enables continuous improvement with respect to gender-responsiveness during the contract execution phase. Collaborative approaches that allow civil servants responsible for planning the delivery of a service to regularly interact with potential users provide opportunities for both men and women to discuss progress and provide feedback to ensure that the needs of all citizens are met (OECD, Forthcoming^[20]).

27. The section below provides an overview and examples of the use of different mechanisms and tools to integrate gender considerations in procurement operations.

Applying user-centred approaches: Understanding women's needs

28. A needs analysis is an investigation to understand the exact needs of primary and secondary users of purchased goods, services and public works. As previously mentioned, key steps need to be taken to ensure that procurement outcomes meet the needs of the users (OECD, 2015^[19]). A needs assessment may also be based on gender analysis. Incorporating a gender perspective into a needs analysis means assessing how it can impact gender equality and how differences in gender roles, activities, needs, opportunities and rights/entitlements affect men and women in certain situations or contexts. For example, when building new infrastructure, the technical specifications need to reflect the needs of all users, including women (EIGE (European Institute for Gender Equality), n.d.^[21]).

29. In **Belgium**, in order to support its constitutional obligations regarding gender equality, Belgium's Institute for the Equality of Women and Men released a manual and checklist in 2018 on gender-sensitive public procurement. This manual specifically mentions how entities should conduct a gender-based needs assessment. The document is aimed at federal staff managing public procurement contracts, as well as gender mainstreaming staff. The central focus of the manual is to explain how public institutions can ensure that differences between men and women are taken into account and equality is promoted during the planning and implementation of public procurement contracts. It highlights the importance of integrating gender dimensions into government contracts and provides guidance on how contractors fulfilling procurement calls can respond to potential gender differences in the process (OECD, 2015^[19]).

30. In **Canada**, in cases where Treasury Board submission is required for procurement, a gender-based analysis must form part of the Treasury Board submission process. Treasury Board submissions are required generally for larger procurements, depending on departmental contracting authorities and the Treasury Board contracting policy (OECD, 2019^[12]).

⁴ Agile project management, originally applied in the ICT sector, is focussed on relationships and people, outcomes, consumer interaction and feedback, and responsiveness to changes. Agile project management is characterized by quick iterative cycles of planning and development that allow a project team to constantly evaluate its work and receive immediate feedback.

Engaging the market for gender-inclusive procurement

31. Before tendering, market consultation is typically used to identify potential suppliers, relevant products and services, and to reduce the asymmetry of information between public buyers and economic operators (OECD, 2017^[22]). Engaging in dialogue with potential suppliers in the procurement planning stage, however, also allows contracting authorities to communicate their needs and expectations to the market, including planned purchasing as well as sustainability or gender equality objectives. Market dialogue with suppliers is an opportunity to gather ideas for implementing gender-sensitive or more socially responsible procurement as well as opinions on the impacts of earlier solutions on suppliers. Ultimately, it can lead to the development of innovative ways of providing services or building facilities.

32. Market dialogue for gender-inclusive procurement can:

- Identify potential bidders and solutions with positive impacts on gender equality;
- Build capacity in the market to meet gender-equality requirements and special gender-based needs;
- Inform the design of the procurement strategy, tender documentation and contract so that gender equality criteria are relevant, linked to the subject matter, achievable and non-discriminatory; and
- Provide feedback to suppliers after the procurement process. Following a tender, bidders should be offered a debrief on the results and advice for how to improve their gender equality-related offering in future tenders.

Applying a gender lens to impact assessment of procurement operations

33. Gender impact assessments are *ex ante* evaluations, analyses or assessments of a law, policy or programme that makes it possible to identify, in a preventative way, the likelihood of a given decision having negative consequences for equality between women and men (European Institute for Gender Equality, 1998^[23]).

34. Gender-based analysis and impact assessments in the case of public procurement can help embed a “gender lens” in public procurement decision making. The assessment involves a dual-pronged approach: an assessment of how potential procurement under consideration can incorporate gender provisions and the projected impacts on women and men once the procurement opportunity has been implemented. This kind of analysis requires a structured and consistent analysis (i.e. systematic, analytical and documented) (Callerstig, 2014^[24]).

35. In **Sweden**, the Swedish Association of Local Authorities and Regions (SALAR) has published a guide on the legal possibilities of imposing gender equality requirements on public procurement. As part of the guide, SALAR has developed checklists that can be used in the preparatory stage of the public procurement process to assess the gender impacts of the planned purchase (Box.1).

Box.1. Swedish Association of Local Authorities and Regions (SALAR): Checklist for local contracting authorities on gender impacts

Within the framework of its Program for Sustainable Gender Equality, SALAR has published a guide on “Procurement for gender equality”. The guide has primarily been elaborated for politicians who wish to increase their knowledge on gender equality issues and to improve quality of services. It provides concrete examples of how requirements on public procurement can be carried out, and aims to encourage local authorities to start using this as an instrument to advance gender equality. The guide also include a checklist with questions to assess the potential impacts on gender equality of the planned procurement. The suggested questions include:

- Is gender equality perspective relevant for the public service in question? Is it possible to integrate a gender equality perspective in this particular service?
- Does the public service concern women and men, girls and boys?
- Can this particular service have consequences that make it essential to do a gender analysis?
- Are the presented statistics related to the public service gender disaggregated? (This question is important when evaluating the background information)
- What impact will the procurement have on women and men, girls and boys? (This question can arise when it comes to the treatment, service or distribution of power and resources)
- Is there a connection between this public service and the gender equality objectives that the municipality or county has set up? (A feasibility study should include an examination of how the procurement can help the organization to achieve their gender equality objectives.)
- Are there any criteria for evaluation and is there a plan for follow-up?

Source: <https://webbutik.skr.se/bilder/artiklar/pdf/7164-809-9.pdf?issuusi=ignore>

36. In **Austria**, since 2013, all new or amended laws and regulations as well as major investment or procurement contracts at the federal level must include a mandatory *ex ante* impact assessment on gender equality, along with other assessments of potential socio-economic and environmental impacts. Quantitative and qualitative thresholds ensure the proportionality of these efforts in relation to the respective law or regulation. The Ministry of Finance and the Federal Chancellery provide content-related and technical assistance. The impact assessments are disclosed for consultation and parliamentary discussions. Ministries are also required to perform *ex post* evaluations of the impacts within five years and report on them to parliament in the Annual Report on Impact Assessment (OECD, 2019^[12]).

37. The **European Commission** also conducts integrated *ex ante* impact assessments on initiatives such as legislative proposals and financial programmes expected to have significant economic, social or environmental impacts (European Commission, 2020^[25]). As gender mainstreaming is a crosscutting task in the European Commission, gender is an aspect that the general impact assessment takes into account. This general impact assessment enhances the coherence of all aspects to be considered during the assessment phase.

38. At a regional level, gender impact assessments have been required by law in the Basque Country of **Spain** since 2005, within the framework of the Equal Opportunities between Women and Men Act (Diputación Foral de Gipuzkoa, 2006^[26]).

Taking into account gender-specific risks

39. Using a gender lens in pre-tender planning could be also relevant for risk assessment. Including gender requirements in the risk assessment of a planned procurement can identify the adverse social impacts, including risks to gender equality, associated with different purchasing categories occurring in relevant value chains. For example, some sectors have greater levels of gender inequality or certain products may include raw materials or ingredients sourced from regions with low labour standards. A risk assessment identifies events or conditions that may prevent the planned public procurement from meeting gender-related objectives and should foresee adequate mitigation measures (OECD-HAICOP, 2019^[27]).

40. Indeed, once these risks are identified and assessed, measures to encourage suppliers' respect for gender equality can be selected and included in different stages of the procurement cycle to try and prevent these risks from becoming realities or lower their impact by changing their likelihood or consequences (OECD-HAICOP, 2019^[27]). To assess gender related risks in value chains, it is necessary to discover whether there are gender related abuses associated with the goods and services to be procured. This requires identifying the relevant risks associated with specific geographic regions, countries, sectors, or individual businesses. Certain risks are common to sectors or geographic regions.

41. There are three specific actors that should be considered when assessing gender-related risks, namely:

1. **End users:** this describes the intended recipients of the service or product supplied by a potential contractor. Risk management activities could assess whether or not a procurement operation responds to end-users' needs, including women.
2. **The contractor's employees:** this describes the people that the contracting authority would deal with on a day-to-day basis -- the first tier of the supply chain. Risk management activities could assess whether or not the contractor's employees comply with gender-based requirements in the tender documentation and/or with national frameworks on gender equality.
3. **Employees involved in supply chains related to the procurement operation:** This involves employees working for suppliers below the first tier. Risk management activities could assess potential supply chains' risks related to the compliance with gender-based requirements in the tender documentation and/or with national frameworks on gender equality.

Integrating a gender lens in tender requirements

42. Market and needs analysis, together with impact assessments, have a clear impact on the development of the tender documentation, including tender requirements (OECD, 2017^[22]). Tender requirements can be technical, environmental, or social.

43. Incorporating gender considerations into tender requirements can be done in different ways: technical specifications; grounds for exclusion; set-asides; and contract performance clauses (see Figure 4). The use of one option or more will depend on various parameters, including the objective to be achieved, the availability of data and information, the procurement category considered, and the regulatory or strategic framework in place. However, in practice, the incorporation of gender requirements in the tender phase needs further development. According to a recent OECD survey, only 30% of central purchasing bodies (CPBs) integrate gender issues into their tender phase (OECD, 2020^[8]).

Figure 4. The incorporation of gender considerations into tender requirements



1. Technical specifications

44. The technical specifications of the tender translate the needs identified in the pre-tendering stage. They must be met by the successful contractor(s) in a way that promotes the required social goal. For example, in **Berlin**, there was a recent tender for public buildings where the technical specifications included, as a result of the needs assessment, equipping public buildings with additional gender-neutral restrooms (Burgi, 2017^[28]).

2. Grounds for exclusion and qualification criteria

45. Exclusion (or debarment) regimes are a common feature of public procurement systems. They stipulate that certain economic operators should not be eligible to win public contracts due to serious criminal or unethical practices, and that documented breaches of corporate responsibility or poor previous performance may be grounds for exclusion.

46. Key international and regional procurement regimes, such as the Agreement on Government Procurement (GPA)⁵, the Model Law on Public Procurement of the United Nations Commission on International Trade Law (UNCITRAL)⁶, and the EU's Public Procurement Directives⁷ include such a mechanism. These regimes allow contracting authorities to reject suppliers following a negative assessment of circumstances such as a criminal offence or breach of professional ethics. In doing so, contracting authorities are not required to link the exclusion specifically to the risk of the specific contract (Government Commercial Function, 2016^[29]). Usually, these grounds for exclusion are divided into two categories: mandatory (which must be applied in all tenders) and discretionary (which public buyers can choose to apply, or which may be made mandatory under national law). Particularly relevant for the topic

⁵ The GPA does not have mandatory rules on exclusion, see https://www.wto.org/english/tratop_e/gproc_e/gpa_1994_e.htm

⁶ UNCITRAL Model Law on Public Procurement, United Nation, 2014. UNCITRAL is an organ of the United Nations General Assembly established to promote the harmonisation and unification of international trade. The UNCITRAL Model Law on Public Procurement aims to encourage the uniform development of national procurement laws globally in line with the principles of competition guiding the WTO while also helping states to achieve "value for money" and avoid abuses in the procurement process (for instance, corruption). It informs the public procurement regimes of numerous states, the Organisation of Security and Cooperation in Europe, the World Bank, the African, Asian and Inter-American Development Banks and the European Bank for Reconstruction and Development. See <https://www.uncitral.org/pdf/english/texts/procurem/ml-procurement-2011/2011-Model-Law-on-Public-Procurement-e.pdf>

⁷ 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. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024&rid=3>

of this policy brief are the exclusions imposed for non-compliance with social and labour laws, as this category allows contracting authorities to exclude suppliers that have infringed applicable obligations. In the field of gender-responsive procurement, this has led some countries to exclude suppliers that do not comply with equal pay for women and men.

47. Under the EU legal framework, there are opportunities to explicitly exclude those that have a poor track record of social or labour law compliance or convictions for child or forced labour. For example, within Directive 2014/24/EU of the European Parliament and of the Council, it states that:

Contracting authorities may exclude any economic operator, with due respect to the principle of proportionality, from participation in a procurement procedure at any time (...) if the authority can demonstrate that in the performance of a public contract the economic operator has violated its applicable obligations in the fields of environmental, social and labour law (European Parliament, 2014^[30]).

48. The EU Directive also allows EU Member States to establish additional grounds for exclusion in their national legislation. Several EU countries have established such grounds for exclusion, aimed at implementing legitimate policies, such as the protection of labour law (OECD, 2018^[31]). The understanding of social and labour law can include also gender mainstreaming.

49. In the same vein, under the **United Kingdom's** Equality Duty an economic operator can be excluded if it violates the Equality Act 2010 (see Box 2).

Box 2. The United Kingdom's Gender Duty

The public sector general equality duty imposed on public authorities in the United Kingdom came into force in 2011 under the Equality Act 2010. This is a legal tool with the potential to deliver significant progress on equality in the public sector – including gender equality – with some impact on the private sector. The public sector equality duty includes the requirement to ensure compliance with the Equal Pay Law. Gender equality schemes place an obligation on public authorities to adopt objectives that address the causes of the gender pay gap and consider ways of dealing with them. This could include changing recruitment methods, introducing flexible working and conducting equal pay reviews.

The gender duty has triggered initiatives in many parts of the public sector and reaches out to the terms of employment applied by private sector contractors. Procurement guidelines have been drafted to encourage the public sector to promote good practice on diversity and equal pay among contractors. Guidance on promoting gender equality was published in 2006 and in 2011, and includes a code of practice.

Source: (Government Equalities Office, 2010^[32])

50. **Switzerland's** public procurement law requires equal pay for men and women (in compliance with the Equality Act) as a prerequisite for participation in public procurement. Government agencies are empowered to carry out random controls to ensure compliance. Infractions may lead to sanctions, such as a contractual penalty or the exclusion from the procurement market. The aim of these regulations is to safeguard social achievements that guarantee industrial peace and prevent undesired socio-political effects and competitive bias. Persons complying with the legal provisions shall not be disadvantaged in favour of those who do not. Competitive bias against employers who respect equal pay shall be avoided (Box 3).

Box 3. Gender-responsive procurement legislation in Switzerland

In Switzerland, the Federal Act on Public Procurement (art. 8) requires equality in the pay of men and women in all companies as a prerequisite (qualification criteria) for awarding government contracts. Those companies that are in violation of this principle are not eligible to bid on public tenders.

Companies with at least 50 employees are obliged to verify their compliance with equal pay. In addition, the Confederation's procurement offices can conduct equal pay audits themselves or enlist external help (e.g. Federal Office for Gender Equality). Should pay discrimination be detected, in a tendering company, the procurement office concerned has the following options: issue a contract penalty; withdraw acceptance of the bid or exclude the bidder from the tender procedure; terminate or withdraw from contract, if this has already been signed.

This legislation is being implemented with specific instruments, guidelines and the necessary administrative procedures. In addition, the Federal Office for Gender Equality as well as the procurement offices provide companies with detailed information of how wage equality is measured as well as the necessary tools and instruments to verify their pay practices. They also have put in place a helpline.

The Swiss government developed an instrument named Logib to support the implementation of these requirements. Other things being equal, Logib shows whether there is a statistically significant gender effect on wage. The tool takes into account human capital-related factors such as level of education, years of service, potential working experience, and factors reflecting the performed function, like skill level and professional position. Companies can use Logib as a self-assessment tool. The tool is publicly available in various languages, anonymous, and free of charge. An equal pay self-check draws on readily available data.

In July 2020, the Excel-based application of Logib has been replaced with a powerful, modern web tool. This version meets the latest application and data privacy requirements. It also provides additional gender-specific indicators alongside the actual equal pay analysis. Publicly available since 2004, Logib is internationally recognised and has been adopted by various countries. In addition to the UN Public Service Award, it has received the EPIC Good Practice Label from the Equal Pay International Coalition (OECD, ILO, and UN Women). The previous, Excel-based version is still available for reference, but will not be developed further.

Source: (Federal Office for Gender Equality, Switzerland, n.d.^[33])

51. **Australia** adopted a similar 'grounds for exclusion' approach. Non-public sector organisations based in Australia with 100 or more employees who wish to participate in government procurement processes must demonstrate their compliance with the 2012 Workplace Gender Equality Act. This means that suppliers should also report on indicators such as the gender composition of the workforce and governing bodies of employers, equal remuneration between men and women, availability of flexible working arrangements, and prevention of sex-based harassment and discrimination. A legislative instrument provides for the minimum standards for each indicator to be achieved by the relevant employers (Australian Government, 2014^[34]).

52. In **Spain**, the Public Procurement Law (Act № 9/2017), states that contracting authorities shall not carry out any tender procedure with companies with more than 250 employees that do not comply with the obligation to have an equality plan. According to Article 45 of Organic Law 3/2007, of 22 March, for the equality of women and men, every company with more than 250 must have an equality plan. This plan

shall contain measures that aim to remove gender obstacles and to promote effective equality for women and men.⁸

53. In **Iceland**, companies have to submit their equal pay certification to the contracting authority if they want to be successful in the bidding process (Box 4).

Box 4. Iceland: Equal pay certification

Iceland's equal pay certification legislation, passed in 2017, is aimed at closing the gender pay gap. All companies with 25 employees or more are obliged to obtain certification from a certifying body of Icelandic Standard ÍST 85 to prove that women and men receive equal pay for equal work. The Centre for Gender Equality oversees the certification process. Companies that do not meet the government requirements are fined. The Icelandic Act on Public Procurement allows for requirements of certification or equivalent.

The purpose of the obligatory equal pay certification is to enforce the current legislation prohibiting discriminatory practices based on gender and requiring that women and men working for the same employer shall be paid equal wages and enjoy equal terms of employment for the same jobs or jobs of equal value. A bill of law (amendments to the Gender Equality Act No. 10/2008) was passed by the Parliament on June 1st, 2017 and came into force on January 1st, 2018. Companies and institutions employing 25 or more workers, on annual basis, are required to obtain equal pay certification of their equal pay system and the implementation thereof. In accordance to the legislation, certification shall meet the requirements of the Standard ÍST 85, Equal Wage Management System – Requirements and guidance (normally called The Equal Pay Standard). Equal pay certification under the Standard ÍST 85 is designed to confirm that when decisions on wage are taken they are based only on relevant consideration.

The Standard ÍST 85 is a management requirement standard and can be used by all companies and institutions regardless of the size of the workplace, operation, role or gender balance amongst staff. The Standard ÍST 85 ensures professional working methods in order to prevent direct or indirect discrimination. The Standard ÍST 85 can be purchased at Icelandic Standards (Staðlaráð Íslands).

Accredited certification bodies shall confirm that a company's or institution's equal pay system and its implementation thereof meet the requirements of the Standard ÍST 85.

Source: Iceland Act on Public Procurement, no. 120/2016 (Art. 50); Iceland Act 10/2008 <https://www.jafnretti.is/en/vinumarkadur/equal-pay-certification/equal-pay-certification>

54. While exclusion criteria focus on negative factors that may prevent a public buyer from awarding a contract to a bidder, selection (or qualification) criteria can help public buyers identify those best placed to promote gender equality. In particular, setting appropriate selection criteria based on economic and financial standing, technical and human resources, and experience can foster gender-inclusive procurement, while ensuring that a wide range of companies can bid for the contract in question. Some examples of selection criteria that may contribute to gender-inclusive procurement are:

- Criteria requiring demonstrable specific experience and expertise of organisations and/or their teams in dealing with social issues relevant to the contract, e.g. accessibility, gender equality and non-discrimination;

⁸ Law on equality of women and men, <https://www.boe.es/buscar/act.php?id=BOE-A-2007-6115>; and Law on Public Procurement, [BOE.es - BOE-A-2017-12902 Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público, por la que se transponen al ordenamiento jurídico español las Directivas del Parlamento Europeo y del Consejo 2014/23/UE y 2014/24/UE, de 26 de febrero de 2014.](https://www.boe.es/buscar/act.php?id=BOE-A-2017-12902)

- Technical capacity to monitor labour practices along the supply chain, including management systems and partnerships with other organisations;
- Evidence of successful completion of previous contracts involving similar gender equality-related requirements (European Commission, 2021^[16]).

3. Set-asides and bid preferences

55. Set-asides are specific legislative provisions or policies that require a certain number or percentage of contracts to be ‘set aside’ for a certain type of supplier (OECD, 2019^[35]). In public procurement, set-aside policies have been used to achieve various goals such as the development of small and medium-sized enterprises or local companies (i.e. Korea, United States, Mexico, Colombia, Tunisia, Morocco), the inclusion of minorities such as indigenous people (Australia), and the promotion of women-owned enterprises (OECD, 2019^[35]).

56. A number of countries are using set-asides strategically to support the participation of women-owned businesses in the procurement process. They include OECD countries such as Korea, Israel, and the United States and non-member countries such as the Dominican Republic, Indonesia and South Africa.

57. In the **United States**, the Small Business Act calls for the participation of small business to be maximised with a goal of awarding them no less than 23% of federal contracts annually. The Act further calls for no less than 5% of these contracts to be given to small businesses that are owned by women (OECD, 2019^[12]).

58. There is a requirement in **Korea** that 5% of public procurement of products and services in the country must be directed to female entrepreneurs. Box 5 analyses the implementation techniques used by these countries to both promote and enforce the use of women-owned enterprises in the procurement process. It also includes the example of Chile, an OECD member country that took a different approach, promoting a seal certification to allow informed options, while also providing training.

Box 5. Supporting the participation of women-owned businesses in the US, Chile and Korea

On the supply side in the United States of America, steps are taken to support women-owned businesses in many ways: loans, technical assistance, etc. A national network of Women’s Business Centres provides educational support, mentoring and counselling, and low-interest loan programmes are in place for women entrepreneurs.

In Korea, efforts have been made to simplify contracting procedures when contracts are being awarded to women entrepreneurs for contracts up to 50 million won. In addition, Women Enterprise Supporting Centres support and develop female entrepreneurs by offering advice, mentoring and training. Furthermore, a fund has been established to financially support women entrepreneurs who otherwise would have trouble accessing credit. The Public Procurement Service, the Central Purchasing Body in Korea, gives advantages to suppliers that create job opportunities in general or employ people with disabilities. Advantages are also given to women-owned enterprises and businesses that employ a high number of women.

In Chile, the use of an ‘e-marketplace’ (*Mercado Público*) makes it easier for businesses to engage in public procurement (a web and mobile application). The fact that this platform is online has helped address many common barriers that micro, small and medium-sized enterprises (MSMEs) – which most women-owned companies are – face, including very large contracts, lack of access to information, limited skills and time to prepare bids and cumbersome bureaucracy. ChileCompra, the central purchasing body in Chile, introduced a programme to promote the participation of women-led companies in the public procurement market. There are training and mentorship programmes for

women and guidelines to help officials include gender considerations in their tenders by incorporating gender-specific evaluation criteria. The results show that women-owned businesses now account for approximately 45% of the public procurement transactions that occur in Chile. Many of the women that participated were from rural areas. 64% were the family's main wage earner. To determine which companies were women-led or women-owned, ChileCompra launched a certification system, the Sello Empresa Mujer (Women Supplier Certification), that certifies "female enterprises" (sole proprietors) and includes this data in the civil registry. For more complex companies to be labelled "female enterprise" in the registry, additional criteria apply. Women have to own the majority of company shares and the CEO has to be a woman. A guide that identifies and seeks to address the issues faced by women who own businesses has also been developed by Sello Empresa Mujer.

Source: (OECD, 2019^[12]); (OECD, 2020^[8])

59. In addition to set-asides, some countries use bid preference mechanisms in awarding contracts. For instance, in the case of a tie between two suppliers, a preference could be given to businesses owned by women. This mechanism is implemented in different countries, usually for SMEs, but there are a few examples of it being applied to women-owned enterprises (OCDE, 2019^[36]). For instance, in **Israel**, the Mandatory Tender Regulation № 57-1993, section 2B 'Encouragement of Women in Business', states that contracting authorities shall award the tender to the supplier that certifies that it is a woman-owned business in a bidding process where other circumstances are equal between two suppliers (OECD, 2020^[8]).

60. In **Japan**, according to the Act on the Promotion of Female Participation and Career Advancement in the Workplace, additional points can be added during tender evaluations to those bidders in the public procurement procedure who hold certain certifications on gender-related issues. In particular, the Act aims to promote work-life balance. In tender evaluations, when ministries and incorporated administrative agencies conduct procurements based on an evaluation of factors other than price (the Comprehensive Evaluation Bidding System and the Competitive Proposal Bidding System), companies with certain certifications related to work-life balance receive additional points. The certifications are for promoting the advancement of women ("Eruboshi" and "Platinum Eruboshi" certification), supporting childcare ("Kurumin" and "Platinum Kurumin" certifications) and youth employment ("Youth Yell" certification) (OECD, 2020^[8]).

61. Finally, in **Mexico**, based on the Law on Acquisitions, Leases and Services of the Public Sector of 2014, contracting authorities are required to adapt their evaluation criteria using the "points and percentages" method. Contracting authorities must give additional points or percentages to suppliers with disabilities, companies that employ at least 5% people with disabilities, or companies applying policies and practices to reduce gender inequalities (OECD, 2020^[8]).

62. However, the implementation of these mechanisms (set-asides and bid preferences) is not without risks. For instance, preferential measures for women-owned enterprises could lead to companies giving ownership of a firm to women only in order to be awarded a public contract. This also raises the issue of how to define and verify women-owned businesses.

4. Contract performance clauses

63. Contract conditions can include performance clauses which are used to specify how a contract is to be carried out in order to achieve specific goals. Gender equality clauses can be also incorporated into the terms and conditions for the execution of the contract. For example, a contract clause could mandate contractors to take measures to promote women within their organisation and comply with their obligations under the relevant non-discrimination legislation. Provisions could be included in a contract for the reconciliation of work and family life within the contractor's own enterprise (Burgi, 2017^[28]). Similarly, a

clause could specify that the contractor will ensure that all line managers for the staff performing the contract complete training on gender equality aspects of recruitment and employment, including pregnancy and maternity; menopause; sexual harassment; family related leaves, such as parental leave and work/life balance (European Commission, 2021^[16]).

64. However, these sorts of outcomes are possible only when contract performance conditions fit with the national legislation (Chatham House, 2017^[37]). For example, in the **European Union**, the Directive on public procurement specifically states that contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are linked to the subject matter of the contract, indicated in the call for tender or in the procurement documents; and neither directly nor indirectly discriminatory. Contract 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 with private life. However, there are some restrictions under the European Union framework on the use of these conditions during the procurement process. Contract conditions should not be disguised as technical specifications, selection criteria or evaluation criteria; whoever is awarded the tender should be able to meet the conditions from the start of the contract. Contract conditions do still need to be set out clearly so that bidders are aware of all of the obligations in the contract and are able to set prices accordingly (OECD SIGMA, 2016^[38]).

65. Contract performance clauses on gender issues could apply not only to one individual tender procedure, but as standard clauses they can be used in a more general way for a wider range of contracts. The gender mainstreaming tool of the European Institute for Gender Equality include sample requirements in terms of gender equality that can be included as clauses in contracts concluded in a tender procedure (Box 6).

Box 6. European Institute for Gender Equality: Gender mainstreaming tool – contract clauses

Examples of contract clauses, requirements that may be included within the implementation conditions:

- Gender-balanced composition of the project team and beneficiaries;
- Balanced presence of women and men in decision-making positions;
- Specific analysis about gender-related concerns in the project and in the reports:
 - mapping of the situation of women and men in the concerned area;
 - elaboration of gender-specific objectives in line with the latest findings and with the objectives of the call;
 - explanation on how these objectives have been achieved;
- Use of sex-disaggregated data and gender indicators;
- The application of user-centred and/or participatory methodologies which take into account a gender dimension by directly involving a fair share of women in the process and by looking at how gender inequalities/differences are structuring the domains and the contexts of a particular policy area;
- Preference given to women when hiring staff in male-dominated sectors.

Source: <https://eige.europa.eu/gender-mainstreaming/methods-tools/gender-procurement>

66. **Berlin (Germany)** is one of the federal states in Germany that uses contract performance clauses to pursue gender equality through public procurement. The *Frauenförderverordnung* (Women’s Promotion Regulation) stipulates that candidates for public contracts must undertake to carry out or launch a certain type and number of measures to promote women and improve the balance between work and family life,

depending on the size of the company at the time of submitting their tender (Pflege und Gleichstellung, 2010^[39]). The Regulation lists a number of possible measures to enable companies in a wide range of sectors to promote women, such as setting binding targets to increase the proportion of female employees in senior positions; verifying equal pay in the company; offering traineeships for girls and young women, especially in occupations where women are underrepresented; and providing workplace or external childcare. At the time of the submission of the tender, the candidate needs to submit a statement as to which of the measures the company intends to carry out or initiate during the contract. If the contracting entities subsequently fail to comply with these obligations, sanctions are possible, e.g. exclusion from the award of the contract or cancellation of the contract. These obligations also apply to subcontractors.

67. However, contract performance clauses can be powerful tools only if their fulfilment is properly monitored and verified during contract implementation. Continuous monitoring is essential in order to strengthen the incentives for the business sector to develop socially responsible and gender-inclusive services, products and business models. The requirements must therefore be clearly defined so that they are easy to follow up.

5. Ex post evaluation of the contracts

68. To make gender-inclusive public procurement successful, public buyers need to learn from their own experience and that of others. This can only be done if the results of gender-inclusive procurement are documented and communicated. An *ex post* evaluation of the tender procedure and contract implementation will help build an understanding of what worked and what did not.

69. Where possible, public buyers should actively include the contractor in these efforts to recognise their part in delivering gender-inclusive procurement.

70. An *ex post* evaluation of the contract, whether done formally or informally, creates a baseline for future contracts. Over time, public buyers should be able progressively to increase the level of ambition within their organisation and to see inspiring results.

3 Limitations and challenges for the uptake of gender-sensitive procurement

71. While some countries are promoting gender equality objectives within public procurement, no clear evaluation mechanism has been implemented to assess the impact of such policies. Indeed, a range of challenges remain in applying a “gender lens” to both procurement policies and procurement processes, including the need for policy coherence, competing policies, and the lack of data and information to integrate gender mainstreaming in the procurement process.

Need for policy coherence and engagement of different stakeholders

72. It is often challenging to incorporate strategic objectives, such as gender equality considerations, into the strategic or regulatory frameworks for public procurement. For most countries, the introduction of gender equality concepts into public procurement is a completely new notion. In unfamiliar territory, it is often difficult for countries to provide the relevant stakeholders with evidence, data and informed knowledge. As for any other policy option, such information is needed to demonstrate the benefits of promoting and incorporating gender equality objectives into procurement policies. It is also important to understand that this move will not achieve substantial results on its own – a broader push for gender equality should also be made in other policy areas (Callerstig, 2014^[24]). Without coherence across a number of diverse policy areas or strong leadership, public entities are unlikely to be willing to be the pioneer, especially if benefits are not demonstrated. In order for gender equality objectives to become more ingrained in the procurement policy-making process, a wider discussion is needed at national level within countries on the benefits of gender equality (European Institute for Gender Equality, n.d.^[40]).

73. Indeed, while some governments increasingly recognise the strong potential of public procurement as a tool for advancing gender equality, tensions can often arise among competing priorities, and particularly between achieving financial savings and ensuring compliance with gender equality requirements. When complementary or strategic objectives are applied to procurement, there may be additional costs to taxpayers, and thus may often be unpopular with cost-driven practitioners. Therefore, as part of policy coherence, it is important for every country to review the concept of value for money to encompass all the strategic objectives to be achieved (OECD, 2018^[41]).

74. In **Sweden**, for example, gender mainstreaming has been the government’s overarching strategy for gender equality policy since its 1993 bill Shared Power, Shared Responsibility. The first plan of how to implement the strategy in the Government Offices was adopted in 2004. In 2011, the government adopted a platform on how gender mainstreaming is to be conducted at central, regional and local level (European

Institute for Gender Equality, n.d.^[40]). This prolonged and historic use of gender mainstreaming throughout all aspects of Swedish policy making has resulted in the concept becoming a norm within the country, ingrained in Swedish public entities.

75. This has had a top-down impact on public procurement in Sweden, exemplified in the adoption of the Swedish National Public Procurement Strategy in 2016. Swedish law requires anti-discrimination measures be taken into account during the formation of public procurement contracts and government spending above a fixed amount is also legally obligated to apply “anti-discrimination conditions” in procurement contracts (Callerstig, 2014^[24]).

76. In addition to the political leadership, the development of such policies requires the involvement of different stakeholders (see Figure 5). Indeed, the OECD Recommendation of the Council on Public Procurement calls countries to foster the effective participation of stakeholders by developing and following a standard process when formulating changes to the public procurement system. Such a process should promote public consultations, invite the comments of the private sector and civil society, ensure the publication of the results of the consultation phase, and explain the options chosen, all in a transparent manner (OECD, 2015^[19]).

77. In addition to public procurement and gender equality policy makers, it is crucial to discuss these policies with contracting authorities. As mentioned, the public procurement function across the world is undergoing major changes, moving from being a purely administrative task to a strategic one. As implementers of public procurement policies, contracting authorities have a better understanding of the challenges faced by public procurement practitioners. Moreover, as businesses are the ones bidding for contracts, engaging with them will enable policy makers to make sure that the policies considered do not erect barrier to participating in public procurement opportunities. Furthermore, procurement is conducted using taxpayer money to deliver public services to citizens; therefore, it is necessary to consult citizens and civil society organisations, as they are directly affected.

Figure 5. Stakeholder engagement for the development of gender policies in public procurement



Reinforcing the capacity of the procurement workforce and suppliers

78. OECD work on public procurement highlights the importance of the public sector's capacity to ensure the successful implementation of reforms and the effective delivery of public services to citizens (OECD, 2015^[19]). Using public procurement as a lever to achieve strategic objectives requires a public procurement workforce with the capacity to do so. It is also crucial to ensure that others who are involved in public procurement, such as controllers, auditors and judges, also have the necessary capacity (OECD, 2016^[42]). Therefore, all actors involved in the public procurement system and process could benefit from the following activities:

- Awareness-raising sessions to understand “why” they need to take into account specific policies. As the promotion of gender equality through public procurement is a relatively new policy objective, it is crucial to share information on the positive impacts that public procurement can have on achieving gender equality. This goes hand-in-hand with the redefinition of the concept of value for money (OECD, 2018^[41]).
- Capacity-building activities and supporting tools such as guidelines or checklists to understand better how to implement the different mechanisms. Without clear examples or case studies on how to actually implement gender equality provisions – particularly in the pre-tendering and awarding of contract phases of the procurement process -- public entities and suppliers alike will struggle to promote gender equality within public procurement contracts.

79. However, moving forward successfully with gender-responsive procurement also requires clarity among potential bidders in the business sector about the strategic priorities of national and subnational governments as well as of the individual public buyers. Potential bidders need to understand what, exactly, is expected from them, including in terms of gender mainstreaming, to be able to design their bids and adjust their business operations and practices accordingly. As noted above, market engagement for an individual tender procedure can serve this purpose in respect of that individual tender; however, capacity-building and awareness-raising activities should also target the business sector.

80. In **Australia**, the “*Workplace Gender Equality – Procurement Principles and User Guide*” addresses both procurement officials and suppliers. The principles help possible suppliers understand the government's expectations and requirements in terms of gender equality and assists officials in carrying out procurement procedures in accordance with the gender equality policies (Box 7).

Box 7. Australia: the “*Workplace Gender Equality*” – *Procurement Principles and User Guide*

The **Workplace Gender Equality Procurement Principles** describes the Australian Government procurement policy associated with the Workplace Gender Equality Act 2012 Cth (WGE Act). The Principles have been developed as part of the Government's commitment to fairer and more consistent measures for ensuring the Government only deals with organisations who comply with the WGE Act. Where the Principles apply, non-public sector employers with 100 or more employees in Australia must supply a letter of compliance with their tender submission or prior to contracting with the Australian Government. “Letters of compliance” are issued by the Workplace Gender Equality Agency.

These Principles are part of the Australian Government's financial management framework, which creates an overarching requirement to manage an agency's affairs efficiently, effectively, economically and ethically and in accordance with the policies of the Government.

The Principles have been developed to assist:

- potential suppliers/tenderers and relevant employers – to understand the Australian Government’s expectations and requirements for making submissions and/or being awarded Australian Government contracts
- officials – to perform their procurement related duties in accordance with Australian Government policies
- Australian Government agencies – to ensure the effective and consistent application of this procurement policy.

The accompanying **User Guide** describes the roles and responsibilities of those organisations that are required to apply the Principles. It also sets out the model clauses for use by Australian Government agencies. (While meeting the WGEA is mandatory, use of the model clauses is optional.) The Guide includes further practical information, such as a simplified flowchart of the procurement process for potential suppliers and tenderers under the Principles, a simplified flowchart outlining the key steps to be taken by Australian Government agencies and officials, and a section on Frequently Asked Questions by suppliers and by procuring agencies.

Source: https://www.wgea.gov.au/sites/default/files/documents/workplace_gender_equality_procurement_principles_user_guide5_0.pdf

81. Also, in **Peru**, the Working Group on Gender Equality (*Grupo de Trabajo para la Igualdad de Género* - GTIGSI), which co-ordinates, articulates and monitors the incorporation of the gender perspective into policies, plans and institutional management, carries out capacity-building sessions for public and business sector actors to raise awareness of gender equality and sexual harassment, promote the use of maternity and paternity leave, etc. (OECD, 2020^[8]).

82. Public procurement agencies could also help women entrepreneurs increase their capacity to participate in tenders, assisting them in overcoming knowledge gaps and providing information about tender opportunities. (International Trade Centre (ITC), 2014^[43])

Lack of data and information

83. A major implementation issue for the development and implementation of gender equality policies in public procurement is the lack of available registries or databases, both at national and international level, that hold relevant gender-disaggregated information. This holds true for all the mechanisms that can be used for gender mainstreaming in public procurement. Indeed, their implementation requires access to the relevant information throughout the procurement cycle from market analysis, through the tendering phase, and during the performance of the contract.

84. For instance, when using public procurement to ensure that suppliers are complying with the national gender equality-related legislation, it is crucial that public procurement officials have the data required to pursue this policy throughout the public procurement cycle. For instance in **Australia**, large employers must report annually to the Workplace Gender Equality Agency on employee remuneration and other gender equality indicators. This provides clear data and information to contracting authorities on the compliance of their suppliers and potential suppliers with the national legislation. However, this data is not widespread across countries. (Chatham House, 2017^[37]). The same applies for countries using public procurement to promote women-owned enterprises. Contracting authorities will require this information throughout the procurement cycle.

85. New technologies may make it easier to collect and share the data necessary to implement gender mainstreaming in public procurement. Indeed, evolutions in the technology used in procurement generate a spillover effect on the entire system, since it can radically change the way in which procurement operations are conducted. In the past, e-procurement platforms have been used extensively to overcome

transparency challenges. However, the recent advances in technology now provide contracting authorities with new possibilities for improving efficiency and using public procurement strategically, including to pursue gender equality goals (OECD, 2018^[44]).

86. For instance, in **Chile**, the Central Purchasing Body, ChileCompra, introduced an electronic registry to determine which companies were led or owned by women. This registry certifies “female enterprises” (sole proprietors) and includes this data in the civil registry. For more complex companies to be labelled “female enterprise” in the registry, additional criteria apply. Women have to own the majority of company shares and the CEO has to be a woman (OECD, 2020^[8]).

87. Measuring and monitoring barriers to public procurement in sectors where women-owned businesses tend to be found is crucial to understanding their impact. E-procurement tools can accumulate real-time data. Based on OECD research, most e-procurement platforms do not include data related to gender considerations. One solution could be to ensure interoperability with other national systems (such as the one on the compliance of economic operators with the national legislation on gender equality) and review the existing data in the different systems and databases. This raises questions about the kind of information governments should gather that might lead to more gender-responsive procurement in the future.

88. **UN Women**, for example, encourages suppliers to include information regarding the percentage of women (1) employed in the supplier’s organization, (2) in executive and senior positions, and (3) shareholders. While such data are not a factor in the evaluation of tenders, UN Women uses them for statistical purposes to support its mandate to promote gender equality and women’s empowerment. Further, it invites suppliers to (1) become signatories to the Women’s Empowerment Principles (WEP) (for companies with more than 10 employees), or (2) sign the “Voluntary agreement to promote gender equality and women’s empowerment (for companies with fewer than 10 employees) (UN Women, 2020^[45]).

Conclusions

89. In order for public procurement to be used as a strategic tool to promote gender equality, there needs to be clear dialogue between policy makers and procurement practitioners. The opportunities for more coherence amongst different policy areas should be also further explored.

90. While it has been shown that a number of countries have policies and regulations in place to stimulate the use of public procurement to promote gender equality, there is still an implementation gap that is amplified by a lack of knowledge and data, and by a lack of understanding of gender-promotion practices on the side of the practitioner.

91. It is also clear that in order for public procurement to have a tangible impact on gender equality, there needs to be a wider conversation occurring at national level. Procurement is unlikely to be the innovator in the field of gender mainstreaming and promotion of gender equality, but can have real impacts when a universal gender equality policy is being applied to all policy areas.

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