



Guidelines

Monitoring of compliance with the requirement of equal pay for women and men in federal public procurement

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1. Subject matter and purpose of the guidelines

These guidelines form the basis for the monitoring of compliance with the equal pay requirement in federal public procurement by the Federal Office for Gender Equality (FOGE). This document is intended to provide detailed information about how the FOGE monitors compliance with the equal pay requirement, in particular to the contracting parties and bidders involved in federal public procurement procedures. It further serves to enhance the transparency of the FOGE's monitoring activities and ensures the equal treatment of the bidders to be monitored.

2. Legal basis and aims of monitoring

In accordance with Art. 8 para. 3 of the Swiss Federal Constitution¹ (Cst.), women and men are entitled to equal pay for work of equal value. This constitutional mandate also applies to the federal public procurement regime: contracting authorities² subject to the Federal Act of 21 June 2019 on Public Procurement (PPA)³ award public contracts for services in Switzerland only to bidders that guarantee compliance with certain social and ecological criteria set out in the PPA. These include, specifically, the workplace health and safety regulations and terms and conditions of employment applicable at the place of performance, and the equal treatment of women and men in respect of salary (Art. 12 para. 1 PPA). Compliance with the requirement to treat women and men equally in respect of salary constitutes a condition of participation. Failure to do so can lead to disqualification from the procedure or withdrawal of the award (Art. 44 PPA) as well as to sanctions (Art. 45 PPA) (see chapter 6.4).

The aim of these requirements is to safeguard social achievements, guarantee industrial peace and prevent undesired socio-political repercussions and distortion of competition. Bidders complying with the legal requirements should not be disadvantaged in favour of those who do not. Distortions of competition adversely affecting bidders that respect equal pay are to be avoided.

Therefore, a contracting authority subject to the PPA must ensure that no public contract is awarded to a bidder that fails to comply with equal pay for women and men. To this end, the contracting authority may require bidders taking part in a procurement procedure to supply the requisite evidence of compliance (Art. 12 para. 5 PPA; Art. 4 para. 4 PPO in conjunction with Annex 3 section 1 letter b PPO). The contracting authority also has the right to check compliance with the equal pay requirement or to arrange for it to be checked. The contracting authority can delegate the task of checking compliance with the equal pay requirement to the FOGE. In accordance with Art. 4 of the Ordinance of 12 February 2020⁴ on Public Procurement, the FOGE sets out the details of its monitoring activities in a set of guidelines. These guidelines fulfil this FOGE task.

3. FOGE's monitoring mandate

- I. The FOGE carries out spot checks on bidders to verify their compliance with the equal pay requirement on behalf of contracting authorities which are subject to the PPA (see chapter 2).
- II. The federal government stipulates the number of spot checks to be carried out each year in the budget with integrated task and financial plan.
- III. The FOGE applies the 'second-pair-of-eyes' principle in conducting its checks. This means that each compliance check is verified by a proven external expert in the field of equal pay (hereinafter: external expert).

¹ SR 101

² Article 4 PPA stipulates which contracting authorities the Act applies to.

³ SR 172.056.1

⁴ SR 172.056.11

- IV. The external experts provide this service under an agency contract with the FOGE and perform clearly defined tasks within the monitoring process (see chapter 6). They conduct themselves in a professional manner at all times and are required to respect the principles of integrity, objectivity and confidentiality.

4. Entity to be monitored

- I. The bidders to be monitored are selected from those that have been awarded a procurement contract by the contracting authorities in accordance with Art. 4 PPA.
- II. They are selected on proposal by the contracting authority or the FOGE.
- III. The FOGE uses either a risk-based or random approach in selecting names to put forward. When conducting its risk-based monitoring activities, the FOGE takes account of the following criteria in particular:
- Details of the result of the equal pay analysis in accordance with the bidder's self-declaration regarding compliance with the requirement of equal pay for women and men in federal public procurement;
 - Amount of difference in wages per sector in accordance with the Swiss Earnings Structure Survey (ESS) conducted by the Federal Statistical Office (FSO);
 - Amount of unexplained, gender-specific difference in wages (i.e. gender pay gap) by sector, region and class of company size in accordance with the decomposition analysis of the ESS data commissioned by the FSO;
 - Frequency, duration and volume of contracts in the federal public procurement system.
- IV. In determining for which business entity the compliance checks are to be carried out, the lowest independent legal entity is the determining factor. An independent legal entity is deemed to be an operating unit with an independent legal corporate form (e.g. AG, GmbH or a company subsidiary). This does not include facilities, branches, affiliates, business units etc. where these do not have an independent legal corporate form.
- V. The contracting authority forwards the documents necessary to carry out a compliance check to the FOGE, in particular the bidder's self-declaration regarding compliance with the requirement of equal pay for women and men in federal public procurement, including any attachments.⁵

5. Monitoring instrument

The FOGE's compliance checks within the federal public procurement system are conducted using the Confederation's standard analysis tool (Logib). The Confederation's standard analysis tool (Logib) is based on sound scientific methods that conform to legal requirements. The FOGE provides detailed information on the subject.⁶ The use of this monitoring instrument ensures that all bidders are treated equally and guarantees the maximum possible legal certainty.

⁵ See Art. 4 para. 1 PPO.

⁶ See the "Declaration of conformity, Standard analysis tool (Logib), Verification of a scientifically rigorous and legally compliant method for analysing wage equality", of 4 March 2020, which can be found at www.ebg.admin.ch > Services > Standard analysis tool: Logib > Documentation.

A limit value is applied by the FOGE in its checks with regard to federal public procurement. If a check shows that the limit value has been exceeded, compliance with the equal pay requirement for women and men, which is a condition of participation in the award of a public contract, is considered as not fulfilled (Art. 12 para. 1 PPA in conjunction with Art. 4 para. 1 PPO).

6. Monitoring procedure

6.1 Initiating the compliance check

- I. The bidder to be monitored will be informed by the FOGE in writing about the imminent check of compliance with the equal pay requirement.
- II. The FOGE will further inform the bidder to be monitored about the involvement of an external expert.

6.2 Data collection

6.2.1 Questionnaire 1

- I. The bidder to be monitored will receive the Questionnaire 1 together with the first letter (see chapter 6.1). The information and documents requested therein serve to plan and determine the next steps in the monitoring procedure. In addition, the bidder is requested to nominate a contact for any queries arising during the monitoring process and to specify the recipient of the result.

In particular, the following information and documents may be requested:

- Bidder's organisational chart;
 - Overview of functions and pay classes, function evaluations, internal classifications, pay bands and other information on wage-setting;
 - Information on how the monthly variable wage is determined and paid;
 - Information on the granting of allowances;
 - Information on the granting of a 13th (or nth) monthly wage;
 - Information on the granting of bonuses and other special payments or wage components which are paid (semi-)annually;
 - Specimen employment contracts.
- II. Questionnaire 1 is to be completed in full by the bidder, signed and returned to the FOGE, together with all the necessary enclosures, within the given deadline (see chapter 7.2).
 - III. The competent external expert will then contact the person specified by the bidder in Questionnaire 1 to clarify any questions and determine the next step in the monitoring procedure.

6.2.2 Questionnaire 2

- I. In the next step, the nominated contact of the bidder to be monitored will receive the Questionnaire 2, in which all the information necessary to conduct the equal pay analysis is to be entered (known as the 'data set').

In particular, the following information may be requested:

- Reference month
- Number of employees in the reference month;

- Number of female and male employees in the reference month;
 - Information on particular employment relationships (e.g. apprentices, trainees/interns, expats, disability pensioners);
 - Information on the usual weekly working hours in the company;
 - Information on individual pay components;
 - Information and explanations on recording the job-related characteristics
- II. Questionnaire 2 is to be completed in full by the bidder, signed and returned to the FOGE together with all the necessary enclosures within the given deadline (see chapter 7.2).
 - III. The information provided by the bidder in Questionnaire 2 is binding in respect of the next steps in the monitoring procedure and may only be modified subsequently in justified exceptional cases.

6.2.3 Conducting the equal pay analysis

- I. The external expert will check all the documents and information and the data set for completeness and correctness of the contents. They will also clarify any questions they may have by contacting the nominated contact.
- II. If the external expert and the FOGE agree that the data is of sufficient quality, the external expert will perform the equal pay analysis and produce a report detailing the entire monitoring procedure, the result of the equal pay analysis that has been performed and any other relevant information.
- III. The process and the result of the equal pay analysis will then be verified by the FOGE together with the external expert's report ('second-pair-of-eyes' principle; see chapter 3 III).

6.3 Result and conclusion of monitoring procedure

- I. If the limit value that applies to the equal pay analysis using the Confederation's standard analysis tool (Logib) is exceeded, compliance with the equal pay requirement for women and men, which is a condition of participation in the award of a public contract, is considered as not fulfilled (Art. 12 para. 1 PPA in conjunction with Art. 4 para. 1 PPO).
- II. The FOGE will inform the contracting authority, the office of the Swiss Federal Procurement Conference (SFPC) and the bidder of the result of the monitoring procedure.
- III. If a compliance check cannot be carried out because the data is of insufficient quality, the FOGE will inform the contracting authority, the SFPC Office and the bidder accordingly.

6.4 Measures and sanctions

If the monitoring procedure shows that the condition of participation regarding compliance with the requirement of equal pay for women and men is not fulfilled, it is the responsibility of the contracting authority to take measures (Art. 44 PPA) and impose sanctions (Art. 45 PPA).

The contracting authority notifies the SFPC of any legally binding exclusion in accordance with Art. 45 para. 1 PPA. The SFPC keeps a non-public list of sanctioned bidders and subcontractors, which records the reasons for the exclusion and the duration of the exclusion from public contracts (Art. 45 para. 3 PPA).

7. Duty to cooperate, deadlines and fees

7.1 Bidder's duty to cooperate

On the basis of Art. 13 para. 1 let. c of the Federal Act of 20 December 1968⁷ on Administrative Procedure (APA), the bidders subject to checks have a duty to cooperate in said administrative procedure. This includes, in particular, the duty to submit to the relevant authority, within the given deadline, the complete and correct information and data required to carry out these checks. Specifically, the duty to cooperate obliges the parties to cooperate in establishing the facts of the case. This extends to every means by which the facts of the case are established, for example, being called upon to answer certain questions or to submit certain documents.

Article 44 para. 1 let. f PPA explicitly governs the procedure if a bidder refuses to allow compliance checks that have been ordered. The related Dispatch states that "bidders are obliged to cooperate in these checks. Refusing to do so or attempting to prevent such checks from being carried out can lead to exclusion from the award procedure." Should a bidder refuse to fulfil its duties of cooperation at the first request of the FOGE or refuse to allow the compliance check to be carried out, the FOGE will inform the contracting authority immediately. In such cases, the contracting authority may take the step of excluding the bidder from the award procedure, deleting it from a list or revoking a contract that has already been awarded (see chapter 6.4).

7.2 Deadlines

Checking compliance with the requirement of equal pay for women and men constitutes an administrative procedure. The deadlines involved in the monitoring procedure are set by the FOGE as the competent administrative authority. In checking compliance with the requirement of equal pay for women and men, the constitutionally guaranteed right to have one's case decided within a reasonable time⁸ must be respected. The deadlines are thus closely aligned with the periods of time specified under procedural law.

Having estimated the time required and the necessary processing time for the bidders that are to be monitored, the FOGE has determined appropriate guidance values for taking action or submitting documents (see chapter 7.3).

In accordance with Art. 22 para. 2 APA, a deadline fixed by an authority may be extended where there are reasonable grounds, provided the party requests the extension before the deadline expires. The FOGE has set appropriate guidance values for the granting of deadline extensions (see chapter 7.4).

7.3 Guidance values for setting deadlines

Procedural step	Guidance value
Completing Questionnaire 1	2 weeks
Completing Questionnaire 2/ data	2 weeks
Responding to simple queries	2-3 working days
Responding to complex queries	2 weeks

⁷ SR 172.021

⁸ Art. 29 para. 1 Cst.

7.4 Guidance values for extending deadlines

Procedural step	Guidance value	Deadline extension
Completing Questionnaire 1	2 weeks	additional 2 weeks
Completing Questionnaire 2/ data	2 weeks	additional 4 weeks
Subsequent collection of education and training data	4 weeks	additional 8 weeks
Responding to simple queries	2-3 working days	additional 2 weeks
Responding to complex queries	2 weeks	additional 4 weeks

7.5 Fees

The FOGE does not charge the bidder any fees for the compliance checks to which it is subjected.

8. Data protection

8.1 Data protection and data security

Data protection and data security are guaranteed in accordance with Swiss data protection legislation. FOGE employees are subject to official secrecy as well as professional, manufacturing and trade secrecy. The external experts called upon by the FOGE are contractually obliged to observe confidentiality, data privacy and data security, under threat of a contractual penalty.

The processed data is stored within a protected area of the federal business processing system. Access is granted only to the FOGE employees tasked with carrying out the compliance checks and the external expert assigned to a compliance check.

8.2 Data transfer

- I. The data exchange between the FOGE and the contracting authority takes place within the Federal Administration's secure network infrastructure.⁹
- II. The data exchange between the FOGE or the external expert and the bidder to be monitored is password-protected and takes place over secure servers in Switzerland.¹⁰
- III. The data exchange between the FOGE and the external expert takes place via the Federal Administration's secure SharePoint.¹¹

⁹ Further information from the Federal Office of Information Technology, Systems and Telecommunication (FOITT).

¹⁰ Further information from FOITT.

¹¹ Further information from FOITT.

9. Exchange of information between federal, cantonal and communal authorities

In addition to the FOGE at the federal level, cantonal and communal administrative offices also conduct checks of compliance with the equal pay requirement in public procurement. To avoid duplication of effort, information on pending and successful compliance checks may be exchanged between these authorities, provided the bidder gives their prior consent.

10. Further information and contact address

Further documents and information on monitoring equal pay compliance in federal public procurement can be found on the FOGE website (www.ebg.admin.ch) and on the SFPC's sustainable public procurement knowledge platform (www.woeb.swiss).

For any queries related to a compliance check, please address the FOGE's nominated contact.

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