

# Scottish Procurement

## Scottish Procurement Policy Note

SPPN 06/2016

23 March 2016



### The European Single Procurement Document (Scotland)

#### Purpose

1. New procurement rules are coming into force in Scotland on 18 April 2016. We told you about some of the changes in [SPPN 06/2015](#) and [SPPN 01/2016](#). We have also developed [e-learning on the changes](#), which is available to anyone.
2. This SPPN focusses on one significant change in particular, the introduction of the European Single Procurement Document (ESPD) (Scotland), and what this means for public purchasers.

#### Key Points

- The new EU Public Procurement Directive introduced a requirement to use the ESPD.
- The ESPD (Scotland) replaces the standard pre-qualification questionnaire (SPQQ), and covers all selection criteria and grounds for exclusion.
- Buyers must use the ESPD (Scotland) in all procurement exercises worth at least the EU threshold which are commenced on or after 18 April 2016.
- We recommend buyers use the ESPD (Scotland) for lower value procurement exercises regulated by the Procurement Reform (Scotland) Act 2014.
- Buyers cannot add to or change the questions in the ESPD (Scotland).
- Buyers must clearly set out their selection criteria, method of short-listing and grounds for exclusion in the contract notice.
- We have developed standard statements to help buyers develop their contract notice.

## **What will this mean for buyers?**

3. Frequently asked questions are annexed.

## **Dissemination**

4. Please bring this SPPN to the attention of all relevant staff within your field of responsibility to whom it may be of interest.

## **Enquiries**

5. Any enquiries in relation to this guidance should be addressed to Scottish Procurement: [Scottishprocurement@gov.scot](mailto:Scottishprocurement@gov.scot)

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## **Frequently asked questions for buyers**

### **What is the difference between the standard pre-qualification questionnaire and the European Single Procurement Document?**

When you use a standard pre-qualification questionnaire (sPQQ), you ask bidders to answer a number of questions which ask specifically about the selection criteria for your contract. The questions vary from contract to contract, but they are mainly selected from a library of standard questions, although you can add your own contract-specific questions, too. You also typically ask bidders to send you any supporting documentation along with their completed sPQQ.

When you use the European Single Procurement Document, the questions will always be the same (although you should delete any which are not relevant to your contract). These questions ask bidders either to confirm that they meet the minimum standards for selection set out in the contract notice, or to describe how they meet the criteria set out in the contract notice. You must therefore put more detail about your selection criteria in the contract notice. You should accept bidders' self-declaration that their responses are true, and only request supporting documentation before you award the contract, or at any other point when that would be necessary to ensure the proper conduct of the procedure – for example, before issuing an invite to tender.

### **What is the European Single Procurement Document?**

The European Single Procurement Document (ESPD) is introduced by the new EU Public Procurement Directive.

It is a standard form which replaces pre-qualification questionnaires, and should make the process of bidding for a public contract easier. It allows bidders to self-declare that they meet your selection criteria, and that they should not be excluded from the competition, without providing evidence at that stage.

The same form will be used across the EU, so a bidder will be able to re-use a form which it has previously submitted for another competition, so long as the information is still correct.

### **How will it work?**

You must set out your selection criteria, including any minimum standards, methods for shortlisting, and any grounds for exclusion, in your contract notice. To help you do this, we have developed a set of standard statements for you to choose from. You will find these in Public Contracts Scotland when you create a contract notice.

When you create an ESPD, you must choose the ESPD questions which are relevant to your competition and to the selection criteria you have listed in the contract notice.

Bidders will fill in details about their business and return a completed ESPD to you. You will then assess their suitability to bid against your selection criteria and the grounds for exclusion.

## **Do I have to use the ESPD?**

Yes. This is a legal requirement for all procurements worth at least the EU thresholds, which commence on or after 18 April 2016. You do not have to use it for lower value contracts, but we recommend that you do.

## **Can I add my own questions?**

No. You cannot add any other questions to the ESPD. This is because the questions in the ESPD come from EU regulations, and already cover every potential selection criterion and ground for exclusion.

## **Can I change the questions to make them specific to my selection criteria?**

No. The questions are deliberately general, so that they are the same every time.

You must make sure that your contract notice sets out what your requirements are against each selection criterion. For example, if you require a particular quality assurance standard, you must say this in the contract notice. This will then allow the bidder to answer the question which asks if it “will be able to produce certificates showing that it complies with the required quality assurance standards”.

## **Can I delete questions?**

Yes. You should delete questions which are not relevant to your contract.

## **How do I shortlist in a restricted procedure?**

In the same way as you do now, by assessing bidders' responses against pre-determined criteria.

Although many questions in the ESPD simply ask the bidder to confirm whether or not they meet minimum standards, most of the questions which relate to a bidder's technical and professional ability allow open responses. These questions, in particular, may allow you to score answers.

Alternatively, you may ask bidders just one question relating to selection criteria. This is known as the global question for all selection criteria, and asks bidders to confirm simply that they meet all of your selection criteria. If you choose to do this, then you can also use the questions in Part V of the ESPD, which ask bidders to describe how they meet the shortlisting criteria you have set out in the contract notice.

## **When can I see proof that what bidders self-declare is true?**

By law, you must verify that the winning bidder does actually have all of the required certificates and documentation, or meets other relevant criteria, before you award the contract.

You can also ask bidders to submit their evidence at any point in the procurement process, if this is necessary to ensure that the process is carried out properly. If you are carrying out a two-stage procedure, we recommend that you verify the statements made by those bidders which you plan to shortlist.

You cannot require a bidder to send you supporting documents or other documentary evidence when you can obtain this directly and free of charge from a national database in any member State of the EU.

From 18 October 2018, you will not be allowed to require a bidder to send you supporting documentation which your organisation already has in its possession.

**Can I still use the standard pre-qualification questionnaire (sPQQ)?**

No. The ESPD covers all selection criteria and grounds for exclusion, and replaces the sPQQ.

**The standard pre-qualification questionnaire was popular with bidders because buyers asked questions in the same way. Will that consistency now be lost?**

No. We have developed a series of statements to help you define your selection criteria in a way which is consistent with other buyers. Much like the questions in the old sPQQ, you do not have to use these statements, but we recommend that you do where possible.

**Will the ESPD be available on PCS-Tender?**

Yes. We have developed ESPD (Scotland). This is a version of the ESPD which has been adjusted slightly to meet the needs of purchasers in Scotland. A fully electronic version of the ESPD (Scotland) will be available on PCS-Tender.

**Will all the responses to sPQQ questions which bidders have previously submitted on PCS-Tender now be lost?**

No. We have managed to transfer around 70 per cent of responses which have previously been provided to sPQQ questions, either to equivalent ESPD questions, or made available for re-use as supporting evidence at verification stage.

**What if I don't use PCS-Tender?**

When you create a notice on Public Contracts Scotland (PCS), you will be able to download a copy of ESPD (Scotland) and the set of standard statements via a direct link to the Procurement Journey. The ESPD (Scotland) contains instructions for use which should be deleted, along with any questions which are not relevant to your contract, before you send it to bidders.

**Why is ESPD (Scotland) different to the standard form produced by the European Commission?**

ESPD (Scotland) is only superficially different to the standard version produced by the European Commission.

We have made two types of changes. Firstly, to reflect language and terms which are more commonly used in Scotland. For example, ESPD (Scotland) refers to supported businesses, rather than sheltered workshops.

Secondly, to insert some sub-questions to reflect developments in Scotland. For example, we have added a sub-question which asks specifically whether the bidder has breached the Employment Relations Act 1999 (Blacklists) Regulations 2010, because this is a mandatory ground for exclusion in Scotland.

**Have the selection criteria and grounds for exclusion changed?**

There have been some changes, but they are mainly the same. It is the process of assessing whether a bidder meets these which has changed.

## **What about sub-contractors?**

If a bidder proposes to sub-contract part of a contract, and relies on the capacity of that sub-contractor in order to fulfil the selection criteria, a separate ESPD must be submitted on behalf of that sub-contractor.

You may choose to request a separate ESPD from any other sub-contractor, in order to verify whether or not there are grounds for excluding it.

If this verification shows that a sub-contractor is in one of the situations which would lead to its mandatory exclusion, you must require the bidder to replace that sub-contractor.

If it shows that a sub-contractor is in one of the situations which might, at your discretion, lead to its exclusion, you may, at your discretion, require the bidder to replace that sub-contractor.

Any decision to request an ESPD where one is not required by law, and to require the replacement of a sub-contractor, should obviously be taken in line with the EU Treaty principles of transparency, proportionality, equality of treatment and non-discrimination.