

Scottish Procurement Policy Note: SPPN 3/2023

27 July 2023

Public Procurement - supporting innovation through procurement

1. Purpose

This policy note provides details on recent innovation-related developments. These developments include:

- updates to [Public Contracts Scotland](#) (PCS)
- the launch of [Scotland Innovates](#)
- associated guidance to support public bodies to consider, and act upon, opportunities to promote innovation

2. Key points

The Scottish Government, in collaboration with Scottish public sector stakeholders, has introduced new developments to help promote and encourage innovation through public procurement, these include:

- three new notices in PCS to help public bodies determine and develop innovative solutions
- changes to the questions buyers are asked to complete in PCS when creating a contract opportunity notice and / or contract award notice for a regulated procurement to help support reporting
- a new Research, Pilot and Innovation Register where information on any research and development (R&D) work or innovative projects can be added
- innovation guidance for buyers on the [Procurement Journey](#)

The Scottish public sector's [Scotland Innovates](#) service is now live. This service allows suppliers and members of the public to propose innovative goods, services and works to the public sector.

3. Background

Under the [Sustainable Procurement Duty](#), in the [Procurement Reform \(Scotland\) Act 2014](#), Scottish public bodies have a duty to consider, before carrying out a regulated procurement, how in conducting the procurement process they can promote innovation, where relevant and proportionate to do so.

Innovation is a key strategic ambition for the Scottish public sector given the challenges facing our society, such as an aging population, global environmental challenges and the need to continue to stimulate the Scottish economy in the wake of the pandemic. In this context, innovation means the implementation of a new or significantly improved product, service or process with the purpose of helping to solve societal challenges or to support smart, sustainable and inclusive economic growth.

Please note this definition of innovation has been derived from [regulation 2](#) of the Public Contracts (Scotland) Regulations 2015.

Recent developments to support and promote innovation within Scottish public procurement and business communities have been motivated by the Scottish public sector's drivers for innovation, which includes the Sustainable Procurement Duty, [Scotland's National Innovation Strategy](#) and the [National Strategy for Economic Transformation](#).

4. PCS developments

To help support and promote innovation in the procurement process the Scottish Government has added the following functionality to [PCS](#). This functionality may complement existing joint working or idea creation processes, technologies and supply chains that may already exist to promote and support innovation. For more information on the new innovation notices, tools, guidance and reporting please see the guidance in the [Procurement Journey](#):

5. Preliminary Market Consultation notice

[Preliminary Market Consultation](#) (PMC) is an open request to the market. Through a PMC notice, a contracting authority can ask participants about what the market can currently deliver and what work / effort may be required to deliver innovative public goods, services or works in the future.

Please note, a PMC notice is a request for information from the market and does **not** constitute an intention or commitment to procure goods, services or works.

6. Supplier Collaboration Tool

Existing goods, services and works often have well established supply chains. However, when looking to procure an innovative solution existing supply chains may require new entrants, where core competencies do not exist. Moreover, in situations where goods, services or works do not exist, and therefore need to be created, the formation of new supply chains may be required.

To aid the potential formation of new supply chains prior to any future procurement exercise being undertaken, functionality has been introduced to PCS where suppliers can seek collaborative partners through the [Supplier Collaboration Tool](#). This tool is automatically included in all PMC notices and does not require any action or input from the buyer. However, buyers should be aware of this functionality and note that any subsequent regulated procurement exercises which come as a result of the PMC notice may result in a consortium bid.

7. Pre-Commercial Procurement Notice and Award Notice

[Pre-Commercial Procurements](#) (PCP) allow contracting authorities to contract for R&D services in a competitive context and identify the best offer(s) the market can deliver to address the contracting authority's needs. A PCP enables contracting authorities to compare alternative potential innovative solutions received from bidders and enables the public sector to engage with innovative suppliers.

[The Public Contracts \(Scotland\) Regulations 2015](#) provide for exemption from the Regulations where it is for the award of R&D service contracts which are covered by the following R&D CPV codes:

- 73000000-2 to 73120000-9
- 73300000-5
- 74320000-2
- 73430000-5

Note: only these codes can be chosen in PCS for these Notices.

Provided that either of the conditions below in (a) or (b) apply:

- (a) the benefits do not accrue exclusively to the contracting authority for use in the conduct of its own affairs.

Note: It follows from the above wording that the exemption applies where the benefits of the R&D service do not accrue exclusively to the authority for its own use. This should

include where the authority shares the benefits of the R&D with the supplier, and / or other authority(ies) / other parties (e.g. this could be when the R&D is shared more widely through open publication of the R&D).

or

- (b) the service provided is NOT wholly remunerated by the contracting authority.

Note: It follows from the above wording that the exemption also applies where the authority is not wholly remunerating the R&D service. This should include the authority sharing the cost of the R&D with the supplier, and / or other authority(ies) / other parties (e.g. a charitable organisation).

Benefits should be shared with bidders under market conditions through competition, in line with the Subsidy Control Act 2022. More information on this is available on our [Procurement Journey](#).

For more information on how to navigate these new PCS notices please see the [user guides](#) on PCS.

8. Research, Pilot and Innovation Register

Contracting authorities looking to innovate can sometimes carry out trials and pilots that may not have been subject to a formal procurement. A new Research, Pilot and Innovation Register has been introduced on PCS where contracting authorities are encouraged to add information on any R&D work or innovative projects being undertaken. This register is not linked to public procurement notices and is not published externally on PCS. Access to the register is a separate permission on PCS and can be requested from your organisation's PCS controller. Please see the [Procurement Journey](#) for more information on this register.

9. Reporting

The [Procurement Reform \(Scotland\) Act 2014](#) places a duty on contracting authorities when preparing their [Annual Procurement Reports](#) (APR), to report on how their regulated procurements complied with the Sustainable Procurement Duty. To assist contracting authorities in producing their APRs [two new innovation questions](#) have been added to contract opportunity notices to help buyers when creating regulated procurement contracts and one question has been added to award notices in PCS. These questions relate to consideration of the Sustainable Procurement Duty and whether innovative goods, services or works are being bought. These questions are only visible to the buyer and will not be published in the notices. The information gathered in response to these questions may be

helpful to a contracting authority when preparing APRs by using the reporting functionality on PCS.

Reports for innovation notices can be found in the [buyer's area](#) / site reporter of PCS which means innovation activity across the public sector can now be reported on by contracting authority, by sector and at a national level.

10. Scotland Innovates

The Scottish Government, in collaboration with National Services Scotland (NSS) procurement stakeholders, launched the new Scotland Innovates service in October 2022. The service allows businesses and members of the public to submit innovative solutions to the public sector. Wherever relevant, contracting authorities should direct those parties with potentially innovative solutions to Scotland Innovates. Submissions are then triaged and, where appropriate, assessed by subject matter experts to determine if the submission has any merits in being investigated further. Reporting on submissions taken forward will be communicated through Centres of Expertise to sectors.

11. Action required

- you are asked to use the developments in PCS as appropriate and to read the relevant guidance before use. Given that these developments are new, we would ask that any feedback is passed across to the Scottish Procurement team via the [Scottish Procurement mailbox](#)
- where a business or member of the public has a potentially innovative solution, which is not currently being tendered, contracting authorities are asked to encourage them to submit their proposal through the Scotland Innovates service

12. Dissemination

Please bring this policy note to the attention of all relevant staff, including those agencies, non-departmental public bodies and other sponsored public bodies within your area of responsibility.

13. Contact details

For more advice and guidance on innovation within procurement please contact [Gary Robinson](#) or [Laura Robertson](#). Alternatively you can also direct queries to the [Scottish Procurement mailbox](#).