



Llywodraeth Cymru
Welsh Government

Supplier Selection

Procurement Advice Note (PAN) for the Welsh Public Sector

May 2018

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1. Introduction

Points to Note - please ensure you read this section first

- *The information set out in this Procurement Advice Note is not legal advice and is not intended to be exhaustive – contracting authorities should seek their own independent advice as appropriate. Please also note that the law is subject to constant change and advice should be sought in individual cases. This document is correct as at May 2017.*

What is the aim of this Procurement Advice Note?

This Procurement Advice Note is designed to be used at the supplier selection stage of procurement when buyers are utilising the online ESPD on Sell2Wales to create their ESPDs (European Single Procurement Documents) and aims to promote the SQuID principles of a risk-based and proportionate approach.

2. Background

The selection (or pre-qualification) stage is used to identify those bidders which have the financial standing, technical capability and capacity to meet your requirements. This is done by asking backwards-looking questions about the bidder's past experience, record and current situation. This is a critical stage as it's where you can set quality standards and any minimum selection criteria that suppliers have to meet if they wish to bid for work; effectively, this is where you "set the bar".

In Wales, the SQuID (Supplier Qualification Information Database) has been used during supplier selection for a number of years. The SQuID, developed in conjunction with public sector stakeholders, was a set of common core questions and was accompanied by a Squizard on Sell2Wales which aided with question-selection.

The Public Contracts Regulations 2015 (PCR2015) introduced a new requirement for contracting authorities to be able to accept the use of a European Single Procurement Document (ESPD) at the supplier selection stage of procurement (Regulation 59) so it is now a legislative requirement for contracting authorities to have the ability to accept and use ESPD. A link to Regulation 59 is provided below:-

<http://www.legislation.gov.uk/ukxi/2015/102/regulation/59/made>

A link to the Commission Implementing Regulation (EU) 2016/17 establishing the ESPD is provided here:-

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0007>

This new process of supplier selection is very similar to the old one but simplifies it even further and modernises the process through a new online ESPD on Sell2Wales. It should not be seen as a major shift in the fundamental approach of supplier selection - it ensure a simpler and more consistent approach across the whole public sector and the SQulD approach continues.

3. Public Procurement in Wales

Public procurement in Wales is underpinned by the Wales Procurement Policy Statement (WPPS) which sets out how the Welsh Government expects public procurement to be undertaken. The WPPS can be accessed via the link below:-

<http://gov.wales/topics/improvingservices/bettervfm/publications/procurement-policy-statement/?lang=en>

It is a requirement of the WPPS that the SQulD approach is applied to supplier selection to ensure that the process is as simple as possible for suppliers to bid for public sector work in Wales. It is important smaller, local suppliers are not precluded from winning contracts, individually, as consortia or through roles within the supply chain. Through the WPPS, Welsh Government procurement policies seek to open up opportunities for smaller firms and third sector suppliers and strengthen the economy in Wales, which also aligns with the procurement objectives in the national strategy 'Prosperity for All'. The new online ESPD support these WPPS principles to make bidding for public sector work as easy as possible.

4. European Single Procurement Document (ESPD)

The ESPD is an electronic self-declaration of bidders' financial status, abilities and suitability for a public procurement exercise. It is designed to make the supplier selection stage less onerous for bidders and avoid them having to submit large amounts of information needlessly. ESPD works on the principles of self-declaration

so the actual documents and supporting evidence will only have to be provided by the winning tenderer. Whilst very similar to SQuID, it is a legal requirement to use ESPD and it is not practical to run the two systems. The ESPD question set will replace the SQuID questions but the SQuID principles of adopting a risk-based and proportionate approach will continue.

Online ESPD

There is an online ESPD system available for use on Sell2Wales, accompanied by Buyer and Supplier User Guidance. It asks potential suppliers to initially just self-declare their status against the exclusion grounds and selection questions. The online ESPD is structured in 3 separate parts:-

- **Part 1** covers the basic information about the supplier, such as the contact details, trade memberships, details of parent companies, group bidding and so on.
- **Part 2** covers mandatory and discretionary exclusions and a self-declaration regarding whether or not any of the grounds apply.
- **Part 3** covers selection criteria in respect of financial standing and technical capacity and a self-declaration regarding whether or not the supplier meets the requirements.

You should begin using the new online ESPD for any new procurements, for procurements already underway, the use of SQuID can be continued. From October 2018 we expect to decommission SQuID - from this date you will only be able to use the new ESPD.

You are encouraged to tell potential suppliers about the new online ESPD approach during any supplier engagement days you hold and also in the procurement documents, explaining that Supplier User Guidance is available on Sell2Wales.

We are aware that a number of users follow the SQuID process through their electronic tendering tools – mainly BravoSolution and Proactis. These providers have worked with us to deliver a number of short term workarounds so that we can all embed the ESPD process into our procurement practice. You will be kept

updated on any developments in this area in due course.

5. Guidance on Part 1 and Part 2 (Exclusion Grounds)

It is mandatory for a potential supplier to complete Part 1 and Part 2 of the online ESPD for all procurements above EU thresholds. The online ESPD can also be used for below OJEU threshold contracts if the authority wishes to take that approach. It is not mandated but will provide a consistent approach and question set for suppliers bidding for sub-OJEU opportunities.

As Part 1 and Part 2 provide a formal statement that the relevant grounds for exclusion do not apply to the potential supplier completing it, a completed form is required for each organisation the potential supplier will rely on to meet the selection criteria. This also means that where the potential supplier is actually a group of suppliers, including joint ventures and partnerships, each potential supplier in that group must complete Part 1 and Part 2 of the online ESPD self-declaration. This requirement must be made clear in the procurement documents.

You can choose whether or not to ask for a self-declaration of exclusion grounds from sub-contractors who are not being relied on by the bidder to meet the selection criteria. However if you choose to ask for one then the procurement documents should explicitly state that one is required. (The standard Selection Questionnaire includes a line to this effect).

You should ensure that all the necessary self declarations are received as part of the selection stage evaluation. A Part 1 and Part 2 declaration is mandatory from potential suppliers to declare that they have not breached any of the exclusion grounds. A completed Part 1 and Part 2 declaration is also required of any organisations that potential suppliers rely on to meet the selection criteria. These could be parent companies, affiliates, associates, or essential subcontractors.

If a potential supplier, or any organisation they rely on to meet the selection criteria, has breached any of the exclusion grounds, they have the opportunity to explain how and what action they have taken to rectify the situation (this is called self-cleaning).

You must accept a self-assessment of compliance with the exclusion and selection criteria at the early stages of procurement. The evidence is only required when the

winning bidder(s) have been identified, or at an earlier stage if that is necessary to ensure the proper conduct of the procedure.

A declaration that exclusion grounds have not been breached has to be provided with bids in open procedures. For all other procedures it must be provided with requests for participation. However specific contracts (call-offs) placed via frameworks do not require a completed declaration.

To reduce the administrative burden of a procurement procedure, documentary evidence is not required when the standard Selection Questionnaire is submitted. Where the evidence is available in a relevant national database, free of charge, the potential supplier can state where the requested evidence can be found (i.e. the name of the repository, website, identification of the file etc.). If this happens you must retrieve it directly from the indicated source.

However you may ask any potential supplier at any time during the procurement to submit all or part of the evidence if it is necessary to ensure the proper conduct of the procedure. You must check the evidence of the winning bidder before award of the contract.]

6. Guidance on Part 3 (Selection Criteria)

Any selection criteria set by contracting authorities must be related and proportionate to the subject-matter of the framework. Selection criteria may relate to:-

- Suitability to pursue a professional activity;
- Economic and financial standing; and
- Technical and professional ability.

The questions included in Part 3 of the online ESPD should be adopted, where relevant, across all relevant procurement procedures over the OJEU threshold. You do not have to use all the questions - only those relevant and proportionate to the contract.

The questions should be used in line with the relevant procurement procedure, and used:

- To test that a potential supplier meets minimum levels of suitability when using the open procedure;
- To pre-qualify suppliers to be invited to tender when using the restricted procedure;
- To submit an initial tender under the competitive procedure with negotiation; and
- To participate in a competitive dialogue, innovation partnership procedure or Dynamic Purchasing System (DPS).

6.1 Guidance on supplier selection questions - Economic and financial standing

Any minimum financial requirements should be clearly stated. The methodology for assessing economic and financial standing should be clearly described. The level of financial checking you undertake should be proportionate to the contract in question and the risks / implications of contract failure. This will help inform whether you take a light touch or in-depth check of financial standing. Annex A provides more information on that and a table to help you assess the implications of contract failure.

You should normally allow potential suppliers to self-certify that they meet minimum financial requirements when assessing economic and financial standing. Checks against self-certification should only be carried out on the winning supplier.

It should be noted the minimum yearly turnover that bidders are required to have is capped at twice the estimated contract value, except in duly justified cases, such as by reference to special risks attached to the nature of the works, services or supplies. In that case, the contracting authority shall indicate their main reasons in the procurement documents.

The financial assessment method used depends on the requirement. You do not have to use every question in this section - only those which are relevant and

proportionate. You should not deselect potential suppliers on the basis of turnover or a credit check alone.

Lots, Frameworks and Dynamic Purchasing Systems (DPS)

The PCR 2015 provides additional explanation on how determining the economic and financial standing of bidders applies to lots, framework agreements and dynamic purchasing systems (Regulation 58(11 to 14) PCR 2015) as follows:-

Where lots are used, Regulation 58 applies to each individual lot:-

- If the successful tenderer is awarded several lots to be executed at the same time, the contracting authority can set the minimum yearly turnover that suppliers are required to have by reference to the groups of lots.
- Where contracts based on a framework agreement are to be awarded following a reopening of competition, the maximum yearly turnover requirement shall be calculated on the basis of the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the framework agreement.
- Where a dynamic purchasing system (DPS) is used, the maximum yearly turnover requirement shall be calculated on the basis of the expected maximum size of specific contracts to be awarded under the DPS.

6.2 A Note on Turnover

Turnover can be a useful and simple measure of capacity to deliver. However, there are a number of issues to be considered.

First, turnover is only a useful measure of capacity if the contract is to be delivered over a period of time, especially if staff need to be skilled and may be difficult to recruit quickly, or if resources are limited. If, however a bidder is able easily to outsource some of the work, and/or use temporary staff or resources, it may not need to have the existing capacity in place.

Second, the legal structure and financial status of the potential bidders should be considered before including a question on turnover. A special purpose vehicle (SPV) does not have an established turnover, for example. Also, sometimes businesses

expand rapidly using new sources of funding and when doing so they can have the capacity and capability to take on significant additional work without having an historical turnover at that level.

Third, turnover is only useful if it is relevant to the ability of the bidder to deliver the required service (or product). Where a (typically) larger organisation offers a number of unrelated services it would be able to claim a high turnover even though very little of it is relevant to the requirement. It is important to focus the question on the turnover that is directly relevant. You can do this by amending the guidance for bidders to explain what you mean by relevant turnover in the context of your procurement.

Generally it is better to set a relevant turnover threshold appropriate to the scale of the contract and its risks, where possible allowing bidders an opportunity to explain what could be done to mitigate the risk of a lower turnover. The primary purpose of the selection stage is to identify those bidders that are sufficiently financially stable and capable of delivering – a maximum score should be achievable by all firms who are considered to present an acceptable level of risk. Clear acceptance thresholds can be very useful to suppliers when they are considering whether or not to bid. This allows suitable bidders to self-certify and unsuitable bidders to de-select.

6.3 Technical and professional ability - Past Performance

You may evaluate the past performance of a potential supplier. Suppliers may be required to have sufficient level of experience demonstrated by suitable references.

It is recommended you include a question requesting details of contract examples or references from either the public or private sector that are relevant to the requirement. The number requested should be relevant and proportionate, three examples are often asked for by organisations. Contracts for supplies or services should have been performed during the past three years. Contracts for works should have been performed during the past five years. The criteria for evaluating the responses from suppliers should not be discriminatory or disproportionate towards smaller businesses.

For joint bids, you may ask the lead supplier to provide a relevant example where one or more group members have delivered similar requirements. If this is not

possible (for example a consortium is newly formed or an SPV will be created for the contract) up to three separate examples should be provided from the principal members of the group. This approach will help you establish that the new entity demonstrates the required level of experience.

Authorities can include a question of their own choosing to assess Technical and Professional Ability but a suggested question is below which can be used if needed:-

1. Please provide details of up to three contracts, in any combination from either the public or private sector; voluntary, charity or social enterprise (VCSE) that are relevant to our requirement. VCSEs may include samples of grant-funded work. Contracts for supplies or services should have been performed during the past three years. Works contracts may be from the past five years. The named contact provided should be able to provide written evidence to confirm the accuracy of the information provided below. Consortia bids should provide relevant examples of where the consortium has delivered similar requirements. If this is not possible (e.g. the consortium is newly formed or a Special Purpose Vehicle is to be created for this contract) then three separate examples should be provided between the principal member(s) of the proposed consortium or Special Purpose Vehicle (three examples are not required from each member). Where the Supplier is a Special Purpose Vehicle, or a managing agent not intending to be the main provider of the supplies or services, the information requested should be provided in respect of the main intended provider(s) or sub-contractor(s) who will deliver the contract.

Please provide the following for each contract:-

- Name of customer organisation
- Point of contact in the organisation
- Position in the organisation
- E-mail address
- Description of contract
- Contract Start date
- Contract completion date
- Estimated contract value

2. Where you intend to sub-contract a proportion of the contract, please demonstrate how you have previously maintained healthy supply chains with your sub-contractor(s). Evidence should include, but is not limited to, details of your supply chain management tracking systems to ensure performance of the contract and including prompt payment or membership of the UK Prompt Payment Code (or equivalent schemes in other countries).

3. If you cannot provide at least one example for this section, in no more than 500 words please provide an explanation for this e.g. your organisation is a new start-up or you have provided services in the past but not under a contract.

6.4 Sub-contractors and supply chains

Bids submitted by a potential supplier proposing to use sub-contractors should provide a relevant example where one or more of the essential sub-contractors have delivered similar requirements (separate examples are not required from each sub-contractor). You should also ask about capability to maintain a healthy supply chain, including paying sub-contractors promptly.

7. Wales-Specific Questions

There is not much scope to add additional questions to the ESPD but the Welsh Government has added three Wales-specific questions which cover important procurement policy areas for Wales – modern day slavery, blacklisting and steel. These should be included where relevant and proportionate, depending on the nature of the contract and what goods and services are being bought. Procurement Advice Notes (PANs) have been produced by Value Wales in these areas - more information is provided below.

7.1 Modern Day Slavery

Since 1 October 2015, commercial organisations that operate a business or part of business in the UK, supply goods or services and have an annual turnover of £36 million or more ("relevant commercial organisations") have been required under Section 54 of the Act to prepare a slavery and human trafficking statement as defined by section 54 of the Act.

In Wales, the Code of Practice on Ethical Employment Practices in Public Sector Supply Chains has been produced by the Welsh Government to inform the public sector in Wales on how to address fair treatment in terms of pay and employment rights through procurement. The Code can be accessed here:-

<https://gov.wales/topics/improvingservices/bettervfm/code-of-practice/?lang=en>

7.2 Blacklisting

Blacklisting is an illegal practice that would come within the category of gross misconduct (a discretionary exclusion criterion). The Blacklisting questions in the online ESPD seek to establish if the bidder has used blacklisting in the last 3 years and for details of any prosecutions. As with all discretionary exclusion criteria you will need to ensure that any action to exclude is proportionate and has taken account of any evidence provided by the supplier that they have “self-cleaned”.

The Welsh Government has taken a firm stance against blacklisting and was the first Government to publicly denounce it in 2013. The blacklisting of individuals is an unlawful practice and legislation has been put in place to prohibit its use. It is important therefore that public sector organisations are aware of the relevant legislation and how it is applied. Please see the PAN for more details:

<http://prp.gov.wales/docs/prp/toolkit/29358PANBlacklistingEngWEBJune17.pdf>

7.3 Steel

The questions on steel in the online ESPD have been drawn up by legal experts to address the issues facing in the steel industry and cover compliance with anti-dumping legislation, ensuring bidders (and their supply chains) have not made agreement with other suppliers to distort competition, supply chain management and health and safety.

The Steel PAN provides advice on setting selection requirements and specifications which will ensure quality suppliers and a quality product, highlighting the importance of supply chain transparency and advertising supply chain opportunities. Please see the PAN for more details:-

[http://prp.gov.wales/docs/prp/toolkit/PANSteelprocurementsupportingthesourcingofsteelinconstructionandinfrastructureprojectsFINAL\(ENGLISH\)pdf.pdf](http://prp.gov.wales/docs/prp/toolkit/PANSteelprocurementsupportingthesourcingofsteelinconstructionandinfrastructureprojectsFINAL(ENGLISH)pdf.pdf)

Please see Annex B for some other suggested questions you may wish to ask in the Selection section

8. Key Points to Remember about Supplier Selection

8.1 Early publication of full specifications and minimum requirements

A major objective of the SQuID approach is promoting efficiency to save suppliers time and cost, both when bidding and also when deciding whether or not to participate in a tender opportunity.

This can be achieved through stating the requirements and any minimum selection criteria clearly upfront. This enables unsuitable or uninterested bidders to easily self-deselect; it will also help to reduce the number of bidders you need to evaluate, saving you time. Careful thought also needs to be given to the selection questions you are asking, why you are asking them and how you are going to score them.

In the contract notice and/or ITT, you should clearly show the following to make it easy for bidders to see what is being asked of them:-

- Full disclosure of PQQ scorings and weightings for criteria AND any sub-criteria (this would also extend to any lots);
- Any pass marks, thresholds or minimum standards; and
- Critical questions which would disqualify the bidder from the process (it is recommended these are attached on a front-sheet so are clearly visible).

8.2 Shortlisting

The principal reason for the selection stage is to identify suppliers capable of delivering the contract and not to shortlist them; the SQuID approach has always supported that. However, there are times when shortlisting may be necessary and if that approach is used, you are encouraged to use “Yes / No” and “Pass / Fail” type questions as much as possible. Questions requiring long essay-type answers

should be avoided as they tend to favour large, national firms which have tender teams and disadvantages smaller, less established firms and those with less bidding experience. Keep those areas of the selection stage that attract a score to a minimum and only for those areas that genuinely address the capability of the bidder to deliver the requirement.

The scoring and weighting mechanisms for shortlisting must be set out clearly in line with the PCR 2015, as stated above. Unless very clear information is provided, it can be difficult for bidders to understand what would constitute a “perfect” answer. Bidders must always have full visibility of how questions will be scored and weighted before they submit their responses.

8.3 The Importance of Early Market Consultation

It is advisable to undertake early market engagement before embarking on a procurement exercise. We can learn a lot from suppliers and should use their expertise in the field of whatever goods, works or services they provide to help inform our approaches and specifications. If given the opportunity, suppliers can often provide new and innovative ideas or alternative service delivery approaches which can help inform procurement approaches. In addition, you could use pre-tender supplier engagement sessions to inform suppliers about the new online ESPD and signpost them to the Supplier User Guidance which is available on Sell2Wales.

The value of such supplier engagement and innovation is recognised in the WPPS and is positively encouraged in the PCR 2015. Whereas traditionally, buyers may have kept suppliers at arms length and been reluctant to talk to them for fear of being accused of favouritism, now they are encouraged to conduct ‘market consultations’ with a view to preparing the procurement exercise and informing suppliers of their procurement plans and requirements (Regulation 40, PCR 2015).

Contracting authorities may, for example, ‘seek or accept advice from independent experts or authorities or from market participants’. Such advice may be used in the planning and conduct of the procurement procedure as long as it does not distort competition and it is non-discriminatory and transparent.

8.4 Consortium bids

Some public sector contracts are too large and out of reach of smaller firms bidding on their own. However, if the contract is suitable for joint bids and the supplier is able to form part of a consortium with other suppliers, a joint bid can be submitted which opens doors and allows access to larger contracts otherwise out of reach.

The ESPD system only allows for one ESPD document to be submitted per bidder. If the bidder is required to submit ESPD responses on behalf of other organisations - such as sub-contractors, consortia members or organisations on which they will rely to carry out the contract – they are instructed to download the ESPD file in Excel format and ask their partner organisations to complete the relevant sections and return it to them offline. The bidder should then attach the ESPD responses from their partners as additional documents within their postbox response, which will include their own ESPD response in electronic format.

It is important to consider the type of contract you are advertising, and the types of consortia that might bid. You are encouraged to read the Joint Bidding Guidance, produced by the Welsh Government (in partnership with the Wales Cooperative Centre and the Wales Council for Voluntary Action) – link provided below:-

<http://gov.wales/topics/improvingservices/bettervfm/publications/jointbidding/?lang=en>

9. Dissemination

Please bring this PAN to the attention of all procurement staff and any other relevant officers in your organisation / sector and any other sponsored public bodies within your area of responsibility.

Contact

If you have any questions about this PAN, please contact us on VWPolicy@gov.wales.

10. Acknowledgements

Welsh Government acknowledges that it has drawn upon the following publications in the production of this Procurement Advice Note:-

- Public Contracts Regulations 2015
- CCS Supplier Questionnaire and guidance
- Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the European Single Procurement Document
- SQuID Guidance on Selecting Questions
- Wales Procurement Policy Statement, Welsh Government, 2015

ANNEX A

1. A Note on Light Touch v In-Depth Financial Checks and Implications of Contract Failure

There will almost always be some cost or inconvenience to the buyer if goods or services are not delivered due to a supplier's financial failure. However, the likelihood and extent (risk) of these costs and inconvenience will vary.

Often the cost to the buyer will be high. This is because a new competition will be needed to find an alternative provider, and another procurement may be needed to put in place an interim solution. The buyer may have to pay considerably more for a temporary solution and may suffer penalties, inconvenience or other costs.

However, it is possible that the cost to the buyer is low – if the buyer is able to select an alternative supplier with minimal additional work and there are low costs associated with having to wait for an alternative solution. In this case it might be possible to ignore financial stability when selecting bidders; this would reduce the costs of the procurement and might open up the competition to bidders who would otherwise be denied the opportunity to grow their business. In effect, the buyer accepts the risk that the initial procurement may fail and may have to be re-run at a later date.

Light Touch v In-Depth Assessment Finance Assessment

In most circumstances, the recommended approach for a light-touch check is to use profitability and the availability of short-term assets as the measures of financial stability, although some public sector buyers prefer to use an acid-test ratio.

The questions make clear that bidders must be in a position to provide evidence to support their responses prior to contract award, and offer them the option of including financial data if they wish.

In-depth check of financial standing

In order to conduct a comprehensive check of financial standing it is necessary to do an in-depth analysis of the financial accounts of an organisation bearing in mind the value, duration and other characteristics of the proposed contract. This analysis

requires a high degree of financial expertise and as a result is sometimes done by external agencies such as Dun & Bradstreet or Equifax, although this information should be used together with in-house analysis wherever possible. The analysis focuses on the strength of the balance sheet of the bidding entity and parent company (where relevant) as well as the historical (and sometimes projected) cash and profitability.

When using external agencies to conduct the financial check it is worth noting that they tend to take a risk-adverse stance and this can make it difficult for SMEs and less-well-established bidders. If this is likely to be a problem, consider whether alternative expertise can be made available.

Depending on the results of the initial analysis, bidders can take further mitigating steps to provide assurance, such as asking for parent company guarantees, finance guarantees, performance bonds or stage-based retentions. It is only after initial analysis that these steps can be determined.

2. Guidance to assess implications of a contract failing

This table is for guidance purposes only; use it as an illustration of how to quantify the cost and inconvenience of having to deal with a supplier who fails to deliver against a contract.

	None = 0	Low = 1	Moderate = 2	High = 4	Very High =8
Cost of providing a temporary alternative	Less than £5,000	Around £10,000	Around £25,000	Around £50,000	Near to or over £100,000
<u>Procurement costs</u> associated with buying a temporary and/or alternative solution	Less than £5,000	Around £10,000	Around £25,000	Around £50,000	Near to or over £100,000
Impact of failure on the public (including health and safety) and/or on the reputation of the buyer.	No external impact.	Very limited impact on public; public perception unlikely to be affected.	Some impact on public; small negative impact on public perception.	Moderate impact on public; moderate negative impact on public perception.	High impact on public; significant negative impact on public perception; significant risk to public health and safety.
Other direct penalties or costs incurred by the buyer if supplier fails to deliver	Less than £5,000	Around £10,000	Around £25,000	Around £50,000	Near to or over £100,000

Instructions

1. Use each row to count the points corresponding to the likely impact of the contract failing.

2. Add the points and use the guidance below to determine your method for checking the financial stability of the bidders.

0 - 3 points (up to approx £35k impact): **check insurance only**

4 – 7 points (approx £35-85k impact): **light-touch check** of financial standing

8 or more points (approx £100k impact and over): **in-depth check** of financial standing

N.B. as stated above it is highly unlikely that any project involving construction would be classified as low risk in terms of the costs of a supplier's financial failure.

ANNEX B

1. Suggested Additional questions - Project Specific

You can include further project-specific questions in the online ESPD relating to the potential supplier's technical and professional ability. However, you are encouraged to keep these to a minimum in the spirit of ESPD and be clear on why you are asking the questions and how you are going to score them. Any project-specific questions asked must be relevant and proportionate to the contract. You should refer to the list of possible topics in PCR 2015 covering technical and professional ability. Some suggested questions you may wish to ask are outlined below.

2. Insurance

You should allow potential suppliers to self-certify that they have, or will have in place, any required insurance in the event that they are awarded the contract. It is not appropriate at this point to insist on evidence that cover already exists. You should specify the level of cover required on a case by case basis. This should be proportionate and reflective of the nature of the work and the risk involved. Any reason for requiring insurance above that required by law should be justifiable.

3. Equalities

There are several reasons why you might need to address equal opportunities as part of your selection of suppliers: first you have a legal obligation to do so under various pieces of legislation (as a public-sector buyer); second you will want to ensure the buyer's policies are promoted throughout the procurement and third because you will want to avoid the publicity of being associated with suppliers with a poor record.

You may already have standard questions that you ask within your authority but if not, there are two ways you could approach it - *light-touch* qualification and *requirement-specific* evaluation.

- The *light-touch* approach is based on the principle that there is already robust legislation in place regarding equal opportunities that is “policed” by various public bodies including the Equality and Human Rights Commission. It assumes that it is not the job of the public-sector buyer to enforce the law but that it is prudent to ensure that contracts are not being awarded to organisations that have broken the law without having “mended their ways”. Taking this approach you should ensure that qualifying bidders and their sub-contractors have not been found guilty of unlawful discrimination or if they have, that they have taken appropriate action to ensure the discrimination will not recur. It is recommended that these questions are always included as qualification criteria.
- The *in-depth* approach is useful where the buyer has specific equal opportunities requirements for the project (e.g. if the contract is for services delivered directly to the public including those with protected characteristics). The ‘in-depth’ approach uses the same questions as the light-touch approach but also asks bidders to confirm their management staff and those with service-delivery responsibilities have received equal opportunities training. Further questions should be added if necessary asking about specific relevant experience and skills. Buyers might also wish to include contract-specific questions, for example asking for evidence of experience of delivering services to people with protected characteristics. In many cases it will make more sense to state clearly what is required in the specification and then explore the issue in more detail at tender stage.

4. Health and Safety

Depending on what goods, works and service you are buying, you will need to ensure you include health and safety questions in Section 3 of the ESPD when appropriate. This is important for two main reasons:-

- The buyer has a duty of care to the public and its own staff and needs to ensure that it buys products and services that are safe and are manufactured and delivered safely.

- The buyer needs to consider its public image and the possible implications of being associated with suppliers with a poor health and safety record.

Health and safety risks are far higher in certain industry sectors and you should expect to seek further information from bidders in these markets. Examples include construction, installation, civil engineering, transportation or logistics, mechanical products, food or food services and social care.

It is best practice that health and safety should be treated as a pass / fail issue at selection stage and answers should not be scored and weighted. The PCR 2015 allow for bidders being able to self-certify so acceptance criteria need to be clear and unambiguous. This means that you should be able to specify what would constitute an acceptable response.

It is up to authorities what Health and Safety questions they include (and it is recommended buyers liaise with Health and Safety experts in their authorities) but some suggested areas to cover are provided below:-

- Past prosecutions - Checking that if the bidder has been successfully prosecuted under health and safety legislation they have since taken decisive action to remedy the fault that led to the prosecution.
- Competent sub-contractors - Ensuring that bidders have appropriate procedures in place for ensuring the health and safety record and procedures of subcontractors.
- Health and Safety certification - Requesting details of certification with third-party accreditation providers.
- Health and safety policy - Ensuring that the bidder has an appropriate Health and Safety Policy in place.
- Health and safety training - Ensuring that the bidder has appropriate Health and Safety training in place
- Nominated person - Asking for details of the bidder's nominated person for Health and Safety
- COSHH - Checking that bidders have appropriate controls in place for dealing with chemicals and substances under COSHH Regulations.

- Assessing bidders' ability to meet statutory health and safety requirements, where equivalent information or certification is offered, or where organisations are able and wish to assess this independently.
- Looking for evidence that bidders have appropriate traffic control measures.

5. Prompt Payment

You can include a question on prompt payment at selection stage to show the public sector's commitment to supporting SMEs through the procurement process. In many ways it does not achieve very much as the answer is not enforceable unless this is addressed as part of the tender process and included in the contract. However, it reinforces the message. It is also worth noting if your procurement involves construction and infrastructure projects and any other appropriate contracts valued at £2m or more you could use a Project Bank Account (PBA) which ensures prompt payment right down the supply chain. Guidance on PBAs can be accessed here:- <http://prp.gov.wales/toolkit/?lang=en>

6. Sustainability

The need to consider the environmental, social and economic impacts of procurement activity has long been established in Wales. There are several reasons why buyers need to consider sustainability when selecting suppliers:

- The buyer will need to remain compliant with relevant EU / UK legislation.
- The buyer may have its own or Welsh Government environmental targets to meet and policies to comply with.
- The buyer should consider the social, environmental, economic and cultural implications of the contracts it awards, in line with the Wellbeing of Future Generations (Wales) Act 2015..
- The buyer should be aware of how its public image may be affected by association with suppliers with a poor record, for example due to prosecution for a breach of sustainability legislation.

Generic goods, services and works (contractors and professional services) Sustainability Risk Assessments

Addressing sustainability requires careful consideration of the nature of the requirement, the opportunities and risks and the most appropriate way of dealing with the risks. This will normally highlight a number of requirement-specific actions to be undertaken at various stages of the project, both during the procurement and the contract delivery.

The Sustainability Risk Assessment or “SRA” is a tool for achieving sustainable procurement, and is already in widespread use in Wales. The recommended approach to dealing with sustainability is to use the SRA for either goods or services when planning your procurement: it helps identify requirement-specific risks to manage during the selection and tender stages. The SRA can be accessed here:- <http://prp.gov.wales/toolkit/?lang=en>

Care must be taken not to confuse those elements of sustainability that relate to the technical competence of the supplier (to be assessed at selection) with those that relate to the delivery of the contract (to be assessed at award stage).

For construction, the SRA will provide specific guidance on what should be addressed by the contractor as part of its Environmental Management System (EMS). Because this is requirement-specific, this is best addressed as part of the tender stage rather than at selection. It is therefore recommended that questions about the EMS are not included at the selection stage.

Third party accreditation and standards

For some procurements, it may be necessary to ensure that bidders have an environmental management system (EMS) certified by a UKAS-accredited body. However, this should not be considered a “tick box” requirement, and should only be required if it is relevant and important to the delivery of a particular contract.

ISO 14001 is an International Standard that is used widely in many parts of the world, and particularly, within Europe, in the construction industry. However there are alternatives, including EMAS, BS 8555 & Green Dragon, which, dependent upon level, can exceed requirements of ISO 14001.

To comply with ISO 14001 a business has to:

- Develop an environmental policy making it clear that the business is committed to protecting the environment and improving its environmental performance.
- Establish an environmental management system (EMS) which is a network of inter-related elements including responsibilities, authorities, relationships, functions, processes, practices, procedures, and resources.
- Identify the most significant environmental aspects of its past, present, and future activities, products, and services.
- Set environmental objectives and targets for all relevant functions and levels within the business.
- Create programs to implement its environmental policy and achieve its environmental objectives and targets.
- Monitor, measure, audit, and review its EMS in order to identify corrective and preventative actions and to improve its overall environmental performance.
- Make sure its environmental policy is appropriate and is in force, and that its environmental objectives and targets are being achieved.

To ensure a proportionate approach (similar to that for ISO 9001 for quality management) you must first decide whether certification to ISO 14001 (or equivalent) is necessary to support the needs of the procurement.

Current UK and Welsh Government advice is that only UKAS accredited (or other national equivalent) bodies should provide the certification service (see www.ukas.com). Within each scheme, there may be different levels, and the UKAS accreditation also categorises schemes differently (types A, B and C) depending on the degree to which implementation and auditing of the management system are separated. You will need to specify what you require.

If bidders confirm they are certified to a recognised standard, you should indicate that this is sufficient and you should not normally need bidders to also describe their environmental management processes at length. The certifications listed in the question are not all equivalent and you should consider carefully your own requirements and adopt a proportionate approach. If you are happy to consider a supplier that is working towards third-party accreditation, or is willing to put this in

place during the lifetime of the contract, you will need to include a further question setting out the details.

If you will not accept a bidder who does not have a third-party certification you should make this clear. However, you may wish to consider whether to ascertain whether bidders have components of an environmental management system in place, albeit one that is not certified to a recognised standard. It will then be for the buyer to determine whether a bidder's response to the questions is sufficient to meet the needs of the procurement.

If is not considered necessary, you may simply ask bidders to confirm that their approach to environmental management includes particular elements of the standards.

Under the Public Contracts Regulations 2015 suppliers should be asked to self-certify that they meet the selection criteria, and are only required to provide supporting evidence if they are successful.

7. Management

Successful delivery of the required product, service or works may be dependent on the contractor's ability to manage the consistency of the outputs that it is delivering, and having effective project management and customer communication "feedback" processes. Use the guidance in each of the sections below to decide how to address these issues in your procurement.

8. Quality Assurance (consistency)

As part of your tendering process, you will need to specify carefully the services, products or works you require and any standards that need to be achieved. It may also be useful to check that the bidder makes use of quality-assurance techniques to enable it to control the consistency of the quality of the outputs it delivers. It is important to note that these techniques focus on ensuring that quality is consistent, and not that it is high – actual standards and quality may need to be specified separately.

In order to understand whether Quality Assurance questions should be included, answer the following question: is the nature of the product, service or works such that it is likely Quality Assurance techniques will contribute significantly to the consistency of the outputs delivered? Typically, this is the case in the procurement of social care, construction and housing maintenance services and in the procurement of goods. If the answer to this question is “yes” then it is recommended that you ask a question about quality assurance.

There are two approaches to choose between when dealing with quality assurance: the first is to require a third-party certified quality management system (QMS) with appropriate scope. Please note that it is current UK and Welsh Government advice that only UKAS accredited (or other national equivalent) certification bodies should provide this service. See www.ukas.com for more details. This might be necessary where a mature and formalised QMS is necessary to meet the requirement; adopting this approach also has the advantage of minimising the evaluation effort required by the Buyer. Ask a question on this if you want to use this approach but bear in mind that, even for a small business, the costs of paying for and maintaining such a system can be typically around £10k-£20k. Welsh Government policy is that bidders should not be required to pay for specific third-party certification as a pre-condition of bidding (except in some circumstances, such as security and some trade accreditations when it is permissible or necessary). However, ISO 9001 is an International Standard and is widely used throughout Europe and across the world (over 600,000 certificates were issued worldwide by 2002); therefore use of the standard for procurement purposes in the UK does not directly discriminate against any companies. Specifying an international standard as a requirement for selection might be considered reasonable when the requirement for quality assurance can be justified.

To comply with the ISO9001 standard:

- The business has a formal quality policy which is a formal statement from management closely linked to the business plan and to customer needs. The quality policy is understood and followed at all levels and by all employees.
- Decisions about the quality system are based on recorded data and the system is regularly audited and evaluated for conformance and effectiveness.

- Records should show how and where raw materials and products were processed, to allow products and problems to be traced to the source. The business has documented procedures for dealing with actual and potential non-conformances. It must make sure no-one uses bad products, determine what to do with bad products, deal with the root cause of any problem, and keep records to improve the system.
- The business needs to review performance regularly through internal audits and meetings, and determine whether the quality system is working and what improvements can be made. It must deal with past problems and potential problems. It must keep records of these activities and the resulting decisions, and monitor their effectiveness. It needs a documented procedure for internal audits.

The cost of adopting the ISO9001 standard can be very high to business. It can require a number of processes and procedures to be documented and staff to be trained; it requires ongoing audits and management oversight. By contrast, the cost of certification by a third party can be comparatively low; it is achieved by on-site auditing and ongoing monitoring. Despite this, sometimes certification costs can be very high, even for those organisations that have good internal procedures in place. So some bidders choose to implement procedures themselves rather than using external consultants. If bidders have recognised third party certification this should be sufficient, and you should not need them to also describe these processes at length.

If you are happy to consider a supplier that is working towards third-party certification, or is willing to put this in place during the lifetime of the contract, you will need to include a further question setting out the details.

Of course, companies may have a quality management system that meets some, but not all, of the requirements of ISO 9001, and it may be adequate for you to specify a lower requirement as necessary to meet the specific needs of the procurement. You may simply ask bidders to confirm that their quality management system includes particular elements of the standard. Under the PCR 2015 suppliers should be asked

to self-certify that they meet the selection criteria and are only required to provide supporting evidence if they are successful.

9. Welsh Language

Depending on what you are buying, it may be relevant for you to take the Welsh Language Measure into account. You can include a question to establish that the bidder currently meets or will meet if successful, the requirements of the Welsh Language Measure. You may wish to add a contract-specific question in cases where experience of delivering in Welsh is an important indicator of capability. You should make clear what would constitute an acceptable answer.

Guidance on contracting out services in the Welsh language' is available below:-

<http://www.comisiynyddygybraeg.cymru/English/Publications%20List/Contracting%20out%20public%20service%20contracts.pdf>

ANNEX C

Frequently Asked Questions

Q. What is the ESPD?

The European Single Procurement Document (ESPD) is an electronic self-declaration of bidders' financial status, abilities and suitability for a public procurement exercise. It is designed to make the supplier selection stage less onerous for bidders and avoid them having to submit large amounts of information needlessly. ESPD works on the principles of self-declaration so the actual documents and supporting evidence will only have to be provided by the winning tenderer.

Q. Why the change from SQuID?

The Public Contracts Regulations 2015 (PCR2015) introduced a new requirement for contracting authorities to be able to accept the use of a European Single Procurement Document (ESPD) at the supplier selection stage of procurement (Regulation 59) so it is now a legislative requirement for contracting authorities to have the ability to accept and use ESPD. Whilst similar to SQuID, it is a legal requirement to use ESPD and it is not practical to run the two systems.

Q. How is ESPD being implemented in Wales?

There is an online ESPD system available for use on Sell2Wales, the national procurement portal. It asks potential suppliers to initially self-declare their status against the exclusion grounds and selection questions.

Q. How does ESPD compare to SQuID?

This new process of supplier selection is very similar to the old one but simplifies it even further and modernises the process. It should not be seen as a major shift in the fundamental approach of supplier selection - it ensure a simpler and more consistent approach across the whole public sector and the SQuID principles of adopting a risk-based and proportionate approach should continue.

Q. Is there any user guidance available?

Yes, the online ESPD is accompanied by Buyer and Supplier User Guidance on Sell2Wales.

Q. When should I start using the online ESPD?

You should begin using the new online ESPD straight away for any new procurements.

Q. What if I have a procurement underway in which I've used SQulD?

Any procurements already started using SQulD can be continued.

Q. How long will SQulD be available for?

We expect to decommission SQulD from October 2018 - from this date you will only be able to use the new ESPD.

Q. Is the online ESPD only available in Sell2Wales?

We are aware that a number of users undertake supplier selection through their electronic tendering tools, mainly BravoSolution and Proactis. These providers have worked with us to deliver a number of short term workarounds so that we can all embed the ESPD process into our procurement practice. You will be kept updated on any developments in this area in due course.

Q. Do we have to use the online ESPD for below OJEU threshold contracts?

It is only mandated for above OJEU threshold procurements under the PCR 2015. However, it can also be used for sub-OJEU contracts if the authority wishes to take that approach – it will help provide a consistent approach and question set for suppliers bidding for sub-OJEU opportunities.

Q. How will ESPD impact suppliers?

It shouldn't have any negative impacts as it continues to simplify the process (as SQulD did) and the self-declaration principles mean they do not have to provide vast amounts of information upfront. You are encouraged to tell potential suppliers about the new online ESPD approach during any supplier engagement days you hold and

also in the procurement documents, explaining that Supplier User Guidance is available on Sell2Wales.

Q. Does the new ESPD support Welsh procurement policy?

Yes, it supports the principles in the Wales Procurement Policy Statement (WPPS) to simplify the process and make it easier for suppliers to bid for public sector work. In addition, three Wales-specific questions have been added which cover important procurement policy areas for Wales – modern day slavery, blacklisting and steel. These should be included where relevant and proportionate, depending on the nature of the contract and what goods and services are being bought.