



Oifig um Sholáthar Rialtais
Office of Government Procurement

Information Note

European Single Procurement Document



Rialtas na hÉireann
Government of Ireland

National Public Procurement Policy Framework

Public procurement is governed by EU and national rules. The [National Public Procurement Policy Framework](#) sets out the overarching policy framework for public procurement in Ireland and comprises five strands.

1. Legislation (Directives, Regulations)
2. Government Policy (Circulars etc.)
3. Capital Works Management Framework for Public Works
4. General Procurement Guidelines for Goods and Services
5. More detailed technical guidelines, template documentation and information notes as issued periodically by the Policy Unit of the Office of Government Procurement

The framework sets out the procurement procedures to be followed by Government Departments and State Bodies under national and EU rules. The framework supports contracting authorities, including the Office of Government Procurement, the four key sectors (Health, Education, Local Government and Defence), individual Departments, Offices, commercial and non-commercial State bodies, and private entities which are subsidised 50% or more by a public body, when awarding contracts for works, goods and services. It supports and enables public bodies to adopt procedures to meet their public procurement requirements and facilitates compliance with EU and national procurement rules.

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This information note is dynamic in nature and will be subject to amendment and review periodically. Therefore in terms of having the most up-to-date version and with the environment in mind, the Office of Government Procurement would encourage officials to check our website www.ogp.gov.ie for the most up-to-date version.

It should be noted that this information note is not intended as legal advice or a legal interpretation of Irish or EU law on public procurement. Legal or other professional advice should be obtained in relation to large or complex projects, or in relation to contracts with non-standard features, or if there is any doubt about the correct procedures to be followed.



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Background

Overview

The European Single Procurement Document (ESPD) plays a crucial role in the digital transformation of public procurement. The ESPD is a tool that makes it easier to participate in public procurement. It is a single self-declaration form of suitability, financial status and abilities of a company used as preliminary evidence in all public procurement procedures in the EU above the [EU threshold](#). The ESPD enables the participating companies to declare that:

- they are not in a situation in which they may have to be excluded from the procedure, and
- they meet the selection criteria.

Under the EU public procurement directives, the ESPD should be provided exclusively in electronic form (eESPD).

Context

Declarations to confirm **the relevant exclusion** and **selection criteria are met** have long been the norm in public procurement procedures across the EU. However, these forms differed greatly across the EU. The ESPD was developed by EU member states in order to make the approach to this issue more consistent and less burdensome. Since 2016, member states should use this document in all public procurement procedures that are subject to the EU Directives.

To date, this process has been paper based¹. As part of the transition to eProcurement, the Office of Government Procurement (OGP) in conjunction with the European Commission have developed an electronic solution, the eESPD, that facilitates buyers and suppliers to complete this stage of the process online and to reuse the form in other similar public procurement procedures.

The ESPD is a list of questions that potential suppliers have to answer to provide a self-declaration that none of the exclusion grounds has been breached, and that they meet the required selection criteria. Whilst the ESPD is a new way of addressing these issues, the questions it asks are not new to public sector buyers and suppliers.

The ESPD is a standard form for use by all EU member states, which replaces pre-qualification questionnaires, and should make the process of bidding for a public contract easier. Its purpose is to remove some of the barriers to participation in public procurement, especially for small- and medium-sized enterprises (SMEs).

¹ Competitions initiated prior to the launch of the electronic ESPD may continue to accept the paper based version of the ESPD but cannot refuse an electronic version of the ESPD

The same form is used by contracting authorities across the EU, so a bidder should be able to reuse a form which it has previously submitted for another competition, so long as the information is still correct. In addition, EU contracting authorities can evaluate ESPDs submitted by potential suppliers from other countries alongside those submitted by Irish suppliers because they have a common reference to the EU Directive exclusion grounds.

All public bodies must now issue and accept the ESPD in its electronic form (eESPD) for all procurement exercises above the EU thresholds. It should make the process of bidding for a public contract easier by allowing bidders to self-declare that they meet selection and exclusion criteria, without the need to provide evidence at that stage.

European Single Procurement Document – Regulation (EU) 2016/7

Introduction

This note contains information on the revised process and how the European Single Procurement Document (ESPD) is to be used. All public bodies must now issue and accept the ESPD form for all procurement exercises above the [EU threshold](#). In its electronic format, the ESPD is known as eESPD.

Supplier selection is a key stage in public procurement where the contracting authority gathers information on and makes assessments of the prospective bidders' credentials, before considering tenders. This includes gathering information about companies, including their track records, financial credentials, whether they have been involved in corruption, whether they meet various selection criteria, and so on.

It is important to note that this method of supplier selection is very similar to the old methods of prequalification, while introducing some new features (such as drop down menus) and a new electronic form. It modifies and modernises a longstanding procurement practice, and should not be seen as a major shift in the fundamental approach of supplier selection. It aims to ensure a simpler and more consistent approach across the whole public sector.

The ESPD asks potential suppliers to self-declare their status against the exclusion grounds and selection criteria questions. The status of potential suppliers can be checked at any stage throughout the procurement procedure but ideally prior to the award stage in an open procedure or the shortlisting stage in a restricted procedure. This reduces the burden on unsuccessful suppliers and on organisations providing evidence for those checks. Under the legislation, the ESPD must now be provided in electronic format and the eESPD facilitates meeting this requirement. The ESPD request form will be integrated within the RFT checklist on eTenders for above threshold tenders.

The primary sections of the ESPD are as follows:

- i. Part I – Information concerning the procurement procedure and the contracting authority or contracting entity
- ii. Part II – Information concerning the economic operator
- iii. Part III – Covers a self-declaration on Exclusion grounds
- iv. Part IV – Covers a self-declaration on Selection criteria in respect of their financial standing and technical capacity

This information note is for contracting authorities, contracting entities and potential suppliers and covers:

- a summary of the key points
- more detailed advice on particular aspects, including:
 - general rules and principles of the ESPD
 - guidance on particular subsections of the ESPD
- Annex A: List of exclusion grounds

- Annex B: Frequently asked questions

Summary of Key Points

1. All contracting authorities should use the ESPD for all public procurement processes that are valued above relevant EU thresholds.
2. Contracting authorities should inform a potential supplier in their procurement documents how they are to access the ESPD and submit a completed version. In this regard, the OGP has provided a specific service which may be accessed by suppliers in their response envelope available on eTenders. This will only appear to suppliers for above OJEU threshold competitions.
3. Contracting authorities should check all the necessary self-declarations are received as part of the selection stage evaluation. It is mandatory for potential suppliers to declare that they have not breached any of the exclusion grounds. A completed ESPD is also required from any organisations that potential suppliers rely on to meet the selection criteria. These might include parent companies, affiliates, associates, or essential subcontractors.
4. 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').
5. Contracting authorities should accept a self-assessment of compliance with the exclusion and selection criteria at the early stages of procurement. Ideally this evidence is only required when the winning bidder(s) have been identified, or at an earlier stage such as the shortlisting stage in a restricted procedure if that is necessary to ensure the proper conduct of the procedure.
6. Contracting authorities must not add to or change the questions in the ESPD. Deviations are permissible for the supplier selection, but must be signalled in the procurement documents.
7. Contracting authorities are obliged to accept the self-certification of the exclusion grounds via an EU ESPD template, including ones in different formats from other Member States, if a potential supplier submits one as part of the selection process. The electronic ESPD service implemented on eTenders is aligned to the EU Commission's ESPD data exchange model v1.0.2
8. An EU ESPD template and response to selection questions submitted by a potential supplier from another Member State can be evaluated alongside the standard Selection Questionnaire submissions from potential Irish suppliers. The exclusion criteria are common to all Member States, and the instructions on the selection questions for the procurement should be provided in the procurement documents and should, therefore, be the same for all potential suppliers.

General Rules for the ESPD

9. An ESPD has to be provided in all procedures above EU Thresholds.
10. In a Dynamic Purchasing System (DPS), the ESPD must form part of the selection criteria for entry onto the DPS. An update to the ESPD can be asked for at any time during the life of the DPS. This is possible where the contracting authority adds an ESPD request in the direct invite to qualified suppliers for the DPS mini-competition.
11. The procurement documents must provide details on how the self-declaration of exclusion grounds section of the questionnaire is to be assessed and list the required selection criteria.
12. In order to reduce the administrative burden involved in a procurement procedure, documentary evidence is not generally required when the ESPD is submitted. Where the evidence is available in a relevant publically accessible national database, free of charge, the potential supplier can state where the requested evidence can be found, i.e. the name of the website etc. If this happens the contracting authority must, if possible, retrieve it directly from the indicated source.
13. However, the contracting authority 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. The contracting authority must check the evidence of the winning bidder before award of the contract or prior to completing the shortlist in a restricted procedure.

Below Threshold Procurements

14. The ESPD is not required in any procurement below the EU thresholds for supplies and services. However, the ESPD may be used as a guide in developing appropriate and proportionate questions. In below threshold procurements questions may be asked to assess the suitability, capability, legal status, and financial standing of a potential supplier, provided that the questions are relevant and proportionate.

Exclusion Grounds – key principles

15. It is mandatory for a potential supplier to complete the ESPD template for all procurements above EU thresholds.
16. The ESPD provides a formal statement that the relevant grounds for exclusion do not apply to the potential supplier completing it. Where appropriate, 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 consortia and partnerships, the consortium lead should complete all of the questions on behalf of the consortium and/or any sub-contractors.. This requirement should be made clear in the procurement documents.
17. Contracting Authorities may 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 the contracting authority chooses to ask for one then the procurement documents should state this requirement.

Selection Questions – key principles

18. The selection questions included in the EPSSD should be used across all relevant procurement procedures over the EU threshold. The contracting authority may not have to use all the questions – only those relevant and proportionate to the contract.
19. The questions should be used in line with the chosen procurement procedure, and used:
 - as part of the tender to test that a potential supplier meets minimum levels of suitability when using the open procedure,
 - to pre-qualify suppliers when using the restricted procedure,
 - to submit an initial tender under the competitive procedure with negotiation, or
 - to participate in a competitive dialogue, innovation partnership procedure or Dynamic Purchasing System (DPS).

Self-declaration

20. Contracting authorities should normally allow potential suppliers to self-declare that they meet the relevant criteria in the supplier selection stage. Generally, only the winning supplier (and any organisations relied upon to meet the winning supplier's selection criteria) should submit evidence. This reduces the need for potential suppliers to submit supporting documents every time they wish to compete for a public contract.
21. If the winning supplier fails to provide the required evidence within set timeframes, or the evidence proves unsatisfactory, the award of the contract should not proceed. Contracting Authorities may then choose to award to the second-placed supplier, provided that they have submitted a satisfactory bid. Alternatively, the procurement process may be terminated.
22. Contracting authorities can require information from any supplier at any stage if it is necessary to ensure proper conduct of the procurement procedure. In a two-stage procedure, the information should be sought before the shortlist is completed and invitations to tender are issued. Contracting authorities should set evidentiary requirements that are proportionate and relevant to the procurement. The approach should be clearly set out in the procurement documents.

Consortia or Groups of Potential Suppliers

23. If the potential supplier is bidding on behalf of a group, for example, a consortium, or relies on the capacity of its sub-contractors, the consortium lead should complete all of the questions on behalf of the consortium and/or any sub-contractors. The consortium lead should make it clear who the lead member of the group is, and who will be contractually responsible for delivery of the contract.

24. All members of the group are required to provide the information required to complete an ESPD. The contracting authority may require members of the group to assume a specific legal form **if awarded** the contract, if considered necessary for the satisfactory performance of the contract. Where the group is proposing to create a separate legal entity, such as a Special Purpose Vehicle (SPV) or consortium, they should provide details of the actual or proposed percentage shareholding of the constituent members within the new legal entity. They should also provide the name for the new entity and details of its legal and operational structure. An SPV is a legal entity that maybe formed to perform a specific contract.
25. Consortium arrangements may be subject to change, and the contracting authority should use the evaluation criteria to make it clear that any updates to this or any other proposed bidding model should be provided to the contracting authority during the procurement process. This will enable the contracting authority to request an ESPD for the new organisation, and carry out a further assessment using the standard selection questions and any specific selection criteria. Contracting authorities should also use the evaluation criteria to reserve the right to deselect a potential supplier or a group prior to any award of contract, based on an assessment of the updated information.

Answers to Supplier Selection Questions

Economic and financial standing

26. Any minimum financial requirements should be clearly stated. The methodology for assessing economic and financial standing should be clearly described.

Technical and Professional Ability

Past performance

27. Contracting authorities may evaluate the past performance of a potential supplier. Suppliers may be required to have sufficient level of experience demonstrated by suitable references.
28. Contracting authorities may request 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 – the questions ask for three examples. 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.
29. Contracting authorities 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 the contracting authority establish that the new entity demonstrates the required level of experience.

Sub-contractors and Supply Chains

30. Bids submitted by a potential supplier proposing to rely on the capacity of its' 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).

Additional questions

Project specific questions

31. Contracting authorities may ask further project-specific questions relating to the potential supplier's technical and professional ability. Any project-specific questions asked must be relevant and proportionate to the contract. Such questions are confined to the areas set out in the ESPD.

Insurance

32. Contracting authorities 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 may not be appropriate at an early stage to insist on evidence that cover already exists. Contracting authorities 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 which is required by law should be justifiable.

ESPD Supplier Aspects

Potential supplier information and exclusion grounds

A completed ESPD is a formal statement that the organisation making the declaration has not breached any of the exclusions grounds. Consequently, all the organisations that you as a potential supplier will rely on to meet the selection criteria need to provide a completed ESPD. For example, these could be parent companies, affiliates, associates, or essential sub-contractors, if they are relied upon to meet the selection criteria. This also means that where you are joining in a group of organisations, including joint ventures and partnerships, each organisation in that group must complete one of these self-declarations. Sub-contractors that you rely on to meet the selection criteria must also complete a self-declaration (although sub-contractors that are not relied upon do not need to complete the ESPD).

It is important to be aware where a supplier seeks to rely on the capacity of others to meet the suitability criteria the supplier must demonstrate that it will have those resources available to perform the contract should they be successful. In the case of reliance for financial or economic standing the contracting authority may impose a requirement for joint and several liability on the supplier and the party upon whom they seek to rely.

When completed, this form is to be sent back to the contact point given in the procurement documents along with the selection information requested in the procurement documentation.

If there are grounds for exclusion, there is an opportunity to explain the background and any measures you have taken to rectify the situation (this is known as 'self-cleaning').

Supplier Selection Questions

The procurement document will provide instructions on the selection questions you need to respond to and how to submit those responses. If you are bidding on behalf of a group (consortium) or you intend to use sub-contractors, you should complete all of the selection questions on behalf of the consortium and/or any sub-contractors.

If the relevant documentary evidence referred to in the procurement documents is not provided upon request and without delay the contracting authority may reserve the right to award to the next compliant bidder.

Consequences of Misrepresentation

If a supplier seriously misrepresents any factual information in filling in the ESPD, and so induces an authority to enter into a contract, there may be significant consequences. In such cases a supplier may be excluded from the procurement procedure, and from bidding for other contracts for three years. If a contract has been entered into you may be sued for damages and the contract may be rescinded. If fraud, or fraudulent intent, can be proved, you or your responsible officers may be prosecuted and convicted of the offence of fraud by false representation, and you must be excluded from further procurements for five years.

Annex A – Mandatory and Discretionary Exclusion Grounds

Mandatory Exclusion Grounds

- Participation in a criminal organisation
- Corruption
- Fraud
- Terrorist offences or offences linked to terrorist activities
- Money laundering or terrorist financing
- Child labour and other forms of trafficking human beings
- Non-payment of tax and social security contributions
- Any other offence within the meaning of Article 57(1) of the Directive as defined by the law on or after April 2016

Discretionary Exclusion Grounds

Contracting authorities have discretion whether to apply some or all of these criteria to the procurement.

Obligations in the field of environment, social and labour law

Where an organisation has violated applicable obligations in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Directive (see below).

- ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise
- ILO Convention 98 on the Right to Organise and Collective Bargaining
- ILO Convention 29 on Forced Labour
- ILO Convention 105 on the Abolition of Forced Labour
- ILO Convention 138 on Minimum Age
- ILO Convention 111 on Discrimination (Employment and Occupation)
- ILO Convention 100 on Equal Remuneration
- ILO Convention 182 on Worst Forms of Child Labour
- Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer
- Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal (Basel Convention)

- Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention)
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10 September 1998, and its three regional Protocols

The above list may be amended only by agreement of EU Member States.

Bankruptcy, insolvency

Bankrupt or is the subject of insolvency or winding-up proceedings, where the organisation's assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State.

Grave professional misconduct

Guilty of grave professional misconduct.

Distortion of competition

Entered into agreements with other economic operators aimed at distorting competition.

Conflict of interest

Aware of any conflict of interest within the meaning of Regulation 24² due to the participation in the procurement procedure.

Been involved in the preparation of the procurement procedure

Not declaring prior involvement in the preparation of the procurement procedure

Prior performance issues

Shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions.

² Conflicts of interest 24.

(1) Contracting authorities shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.

(2) For the purposes of this Regulation, "conflicts of interest" includes any situation where a relevant staff member has directly or indirectly a financial, economic or other personal interest which might be perceived to compromise his or her impartiality and independence in the context of the procurement procedure.

(3) In paragraph (2), "relevant staff member" means a staff member of the contracting authority or a procurement service provider acting on behalf of the contracting authority who is involved in the conduct of the procurement procedure or may influence the outcome of that procedure.

Misrepresentation and undue influence

The organisation has influenced the decision-making process of the contracting authority to obtain confidential information that may confer upon the organisation undue advantages in the procurement procedure, or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.

Annex B – ESPD Frequently Asked Questions

Q1. What is the European Single Procurement Document?

The ESPD plays a crucial role in the digital transformation of public procurement. The ESPD is a tool that makes it easier to participate in public procurement. It is a single self-declaration form of suitability, financial status and abilities of a company used as preliminary evidence in all public procurement procedures in the EU above the [EU threshold](#). The ESPD enables the participating companies to declare that:

- they are not in a situation in which they may have to be excluded from the procedure, and
- they meet the selection criteria.

Under the EU public procurement directives, the ESPD should be provided exclusively in electronic form (eESPD).

The ESPD is a list of questions that potential suppliers have to answer to provide a self-declaration that none of the exclusion grounds has been breached, and that they meet the required selection criteria. Whilst the ESPD is a new way of addressing these issues, the questions it asks are not new to public sector buyers and suppliers.

The ESPD is a standard form for use by all EU Member States, which replaces pre-qualification questionnaires, and should make the process of bidding for a public contract easier. Its purpose is to remove some of the barriers to participation in public procurement, especially for small- and medium-sized enterprises (SMEs).

The same form is used across the EU, so a bidder should be able to reuse a form which it has previously submitted for another competition, so long as the information is still correct. In addition, contracting authorities can evaluate ESPDs submitted by potential suppliers from other countries alongside those submitted by Irish suppliers because they have a common reference to the EU Directive exclusion grounds.

All public bodies must now issue and accept the ESPD form for all procurement exercises above the EU threshold. It should make the process of bidding for a public contract easier by allowing bidders to self-declare that they meet selection and exclusion criteria, without the need to provide evidence at that stage.

Q2. Where do I find guidance on using the eESPD?

Guides for both contracting authorities and suppliers are available on eTenders.

Guidance for contracting authorities is available [here](#).

Guidance for suppliers is available [here](#).

Q3. 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. It is not mandatory to use it for below EU threshold procurement processes.

Q4. Do suppliers need to fill in a new ESPD every time they bid?

The ESPD is intended to be reusable for similar tender exercises. However, it is likely that the suitability criteria of each ESPD will be framed to suit the requirements of that individual procurement exercise. Therefore, suppliers will be expected to submit an individual ESPD response that best suits to those particular questions and requirements each time they bid.

In cases where the ESPD is reusable suppliers will be able to store and reuse their answers to the ESPD standard questions on eTenders to reduce the administrative burden. Suppliers will have an ESPD response library within their eTenders profile which will allow re-use of an ESPD template. The supplier can also export their response created on eTenders and re-use on an eTendering platform in another EU member state.

Q5. How will it work?

Contracting authorities will set out their selection and exclusion criteria, including any minimum standards and methods for shortlisting, in their contract notice and/or procurement documents. They will then issue an ESPD which is relevant to their procurement exercise and make it available for anyone interested in bidding for their contract.

Potential suppliers will complete and submit their ESPD response to the buyer, who will assess bidders' suitability against the selection and exclusion criteria.

Q6. Can contracting authorities add their own questions to the ESPD?

No. Contracting authorities 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. Where the contracting authority considers that a Class C exclusion ground or a particular selection criterion is not appropriate to their procurement they do not have to include it in the procurement.

Q7. Can I change questions to make them specific to my own selection criteria?

No. The questions are deliberately general, so that they are the same every time. Contracting authorities must make sure that the contract notice and/or procurement documents set out what the requirements are against each selection criterion. For example, if contracting authorities require a particular quality standard, they 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 standards".

Q8. How do contracting authorities shortlist in a restricted procedure?

In the same way as you do now, by assessing the potential suppliers' responses against predetermined criteria.

Although many questions in the ESPD simply ask the potential supplier 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, allow contracting authorities to score answers.

Alternatively, contracting authorities may ask potential suppliers just one question relating to selection criteria. This is known as the global question for all selection criteria, and asks suppliers to confirm simply that they meet all of the selection criteria. If contracting authorities choose to do this, then they can also use the questions in Part V of the ESPD, which ask suppliers to describe how they meet the short listing criteria they have set out in the contract notice and/or procurement documents.

Q9. When can a contracting authority ask for proof to back self-declarations?

Contracting authorities must verify that the winning supplier does actually have all the required evidence, or meets the relevant criteria, before they award the contract.

Contracting authorities can ask potential suppliers to submit their evidence at any point in the procurement process if it is necessary to ensure the proper conduct of the procurement.

For multi-stage procurements, contracting authorities should verify the evidence before taking potential suppliers beyond the first stage.

Contracting authorities cannot require a potential supplier to provide them with evidence when they can obtain it directly and free of charge from a national database.

Q10. Only the potential suppliers that have been shortlisted or, have been successful, will need to submit the documentation which proves that it qualifies for the contract. If a supplier is found to have misrepresented itself, what happens?

This will depend on what the issue is.

- If it emerges that a supplier is actually in one of the situations which is a mandatory ground for exclusion, or if it does not meet one of the minimum selection criteria, then that supplier must be excluded from the competition. Depending on the nature and stage of the competition, that may mean either that it proceeds without that supplier, or that competition should be re-evaluated without that supplier's tender.
- If it emerges that a supplier is in one of the situations which is a discretionary ground for exclusion, then the decision on whether or not to exclude that supplier will be up to the contracting authority, which will have to take a decision which is in line with the EU Treaty Principles of transparency, proportionality, equality of treatment and non-discrimination.
- If the issue is more administrative in nature (for example, mistakes in providing the documentation), then the authority will have the option of inviting the supplier to supplement or clarify the documentation provided.

Q11. Why is the ESPD used in Ireland different to the standard form produced by the European Commission?

ESPD (Ireland) is only superficially different to the standard version produced by the European Commission. This has been done to reflect language and terms in more common usage in Ireland.

Q12. What about sub-contractors and consortium members?

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.

The contracting authority 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 a sub-contractor is in one of the situations which would lead to its mandatory exclusion, the bidder will be required to replace that sub-contractor and submit a new ESPD on behalf of their replacement. However, if the grounds are of a discretionary nature the contracting authority may, at their discretion, require the potential supplier to replace the sub-contractor.

Q13. What is self-cleaning?

The revised European Directives provide that potential suppliers who were subject to either mandatory or discretionary exclusion may be considered for future public procurement procedures where they have proven that they have resolved the issue leading to the exclusion. In this regard, the potential supplier who has been excluded from public procurement can have the exclusion ended if they effectively 'self-clean'.

Potential suppliers are required to demonstrate that they have taken remedial action, to the satisfaction of the contracting authority in each case. In order for the evidence provided to be sufficient it must, as a minimum, prove the supplier has 'self-cleaned' as follows:

- paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct,
- clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities, and
- taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The measures taken shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. If such evidence is considered by the contracting authority (whose decision will be final) as sufficient, the potential supplier shall be allowed to continue in the procurement process.

If the potential supplier cannot provide evidence of 'self-cleaning' that is acceptable to the contracting authority, they are to be excluded from further participation in the procurement and provided with a statement of the reasons for that decision.

Q14. What do contracting authorities ask suppliers for in the Light Touch Regime (LTR) procurement?

While the grounds for mandatory and discretionary exclusion do not apply to procurements under the LTR as a matter of law, the contracting authority would still normally exclude suppliers that had been found guilty of the mandatory exclusion offences.

A selection of questions from the ESPD for above-threshold LTR contracts can be used as appropriate.