



European  
Commission



# Dynamic Purchasing Systems

A guideline on  
the use of DPS



**European Commission**

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The Multi-Stakeholder Expert Group on e-Procurement (EXEP) is a consultative entity set up by the European Commission to provide advice and expertise to Commission services. The views expressed in this report are the views of the Expert Group and do not necessarily reflect the views of the European Commission or the Member States.

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# 1 Executive summary

## 1.1 Introduction

In 2017 the Commission published a Communication on “Making Public Procurement better in and for Europe”. The document addresses “Six Strategic Priorities” and the underlying areas within public procurement that have to be improved, to help transform public procurement into a powerful instrument. Among these priorities is boosting the digital transformation of procurement. Dynamic Purchasing System (DPS) supports all of the six strategic priorities.

The goal of this guideline is to both describe the legal framework and to provide some practical information on how a DPS can be set up and used, based on experience when using DPS in the different Member States. We also elaborate with some questions that may arise.

Below we give a brief description of the content in the chapters in this guideline.

## 1.2 The legal framework of DPS

The DPS has two stages as in the restricted procedure. The first one is to qualify economic operators (EOs) and the second one is for the specific procurements. The difference to all other types of procedures in the Directives is that it gives a possibility for contracting authorities (CAs) to continuously procure goods and services in an efficient way and for EOs to become qualified and then participate at any time in specific procurements. These specific procurements can occur continuously. Therefore, it is a good instrument to attract Economic Operators (EOs) and especially Small and Medium Size Enterprises (SMEs).

## 1.3 A graphical view of the functioning of DPS

In order to further describe how the DPS would function in practice, the chapter shows a graphical view on how the DPS works and helps to understand the process.

## 1.4 The full electronic process of a DPS

The DPS is meant to be used in a fully electronic process. A reason is that a DPS is aimed to be used for standardized goods, services or works. As specific procedures are recurring, it makes a lot of sense to digitize the process completely. From EOs request to become qualified and participate, to the evaluation of the tenders and until payment, this is a process that can reap all benefits. We describe how a completely electronic process of a DPS could be done with both eDelivery and standardized information.

## 1.5 The usage of the electronic catalogue

One way that is explicitly mentioned in the Directive is to make use of eCatalogues also in a DPS. The chapter will give some information on how this can be done.

## 1.6 Benefits and challenges of a DPS

There can be a number of benefits of using a DPS for both CAs and EOs. One of the most important benefits for EOs is that a DPS is always open to participation. EOs can request to participate at any time and when qualified (admitted to the system) they can decide for which specific procurements they want to submit tenders. An advantage for CAs is that procedures can run quicker than other procedures. But then, there are challenges that a CA needs to consider when using a DPS.



## 1.7 The uptake of DPS based on TED data

TED data provides some information on how DPSs are actually used. While there are some early adopters, generally the data shows that uptake is still very low and plays no significant role compared to framework agreements. Nevertheless, the numbers are rising.

## 1.8 The DPS questionnaire and results

During the summer 2020 a questionnaire was sent to the Member States regarding the usage of DPS. The questions and the results are presented in this chapter.

## 1.9 Questions and Answers

This chapter describes several topics that could be raised by CAs considering the use of DPS.

## 1.10 DO's and DON'Ts

Under this chapter, we give some tips of what we consider a CA should do and should not do when using DPS.

## 1.11 Final remarks

This section gives some final remarks on this guideline.

## 1.12 Annex

In the Annex a number of Member States are presenting how DPS is used in their country.

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## 2 Glossary

Please find below a list of terms and their definitions, that are used often in this guideline.

Defined terms are indicated with capital letters.

- **Categories:** Contracting authorities shall for the purpose of awarding contracts under a DPS indicate any division into categories of products, works or services and the characteristics defining them. The term is described in Article 34 of the Public Procurement Directive and Article 52 of the Utilities Directive.
- **Central purchasing body:** means a contracting authority providing centralised purchasing activities and possibly, ancillary purchasing activities. In this document the term is used with its abbreviation CPB.
- **Contracting authorities (CA):** Means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law. In this document the term is used with its abbreviation CA.
- **Directives:** In the guideline it is often referred to the Directives. Usually, it is referred to the Public Procurement Directive 2014/24/EU, since the rules regarding DPS often are similar to the Directive 2014/25/EU on procurement by entities operating in the water energy, transport and postal services sectors. If not specified otherwise in the document, the reference will always be to the Public Procurement Directive 2014/24/EU, but often we refer to the Articles in both Directives. If not specifically stated a reference to the Directives is meant as a reference to the directives in whole, i.e., both recitals and articles.
- **DPS:** Is the abbreviation for Dynamic Purchasing System.
- **Economic operator (EO):** Means any natural or legal person or public entity or group of such persons and/or entities, including any temporary association of undertakings, which offers the execution of works and/or a work, the supply of products or the provision of services on the market.<sup>1</sup> In this document the term is used with its abbreviation EO.
- **eCatalogues:** Contracting authorities may require tenders to be presented in the format of an electronic catalogue or include an electronic catalogue. The usage of eCatalogues is described in Article 36 of the Public Procurement Directive and Article 40 in the Utilities Directive.
- **eDelivery:** Electronic delivery of documents. Also, a network of nodes for digital communications, one of the building blocks of the European Commission connecting Europe Facility (CEF). eDelivery helps public administrations to exchange electronic data and documents with other public administrations, businesses and citizens in an interoperable, secure, reliable and trusted way.
- **Lots:** Contracting authorities may decide to award a contract in the form of separate lots and may determine the size and subject matter of such lots and also indicate whether tenders may be submitted for one, for several or for all of the lots. Rules regarding lots can be found in Article 46 of the Public Procurement Directive and in Article 65 of the Utilities Directive.
- **Mini-tender:** The word mini-tender is often used instead of the wording specific procurement as defined for DPS. In this document, the wording “specific procurement” as it is defined for DPS is used. Mini-tender refers to the reopening the competition under a Framework agreement.
- **MS:** Is the abbreviation for Member States.
- **Public Procurement Directive:** Throughout the guideline, the term “Public Procurement Directive” is, unless otherwise specifically stated, used as a reference to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement.

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<sup>1</sup> Public Procurement Directive Article 2 and Utilities Directive Article 2

- **Specific procurement:** The word is used when CAs invite all admitted participants to submit tender under DPS. It can be used as a synonym for mini-tender, but in this document, we will use "specific procurement".
  - **Tender:** In the Public Procurement Directives the word tender is used, but in practical life, very often the synonyms bid or offer are used. In this guideline we mainly use the word "tender".
  - **Utilities Directive:** Throughout the guideline, the term "Utilities Directive" is, unless otherwise specifically stated, used as a reference to Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal sectors.
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### 3 Introduction

“Making Public Procurement better in and for Europe” is the title of a Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, dated 3.10.2017. This document addresses the following “Six Strategic Priorities” and the areas within public procurement that have to be improved.

1. Ensuring wider uptake of strategic public procurement
2. Professionalising public buyers
3. Improving access to procurement markets
4. Increasing transparency, integrity and better data
5. Boosting the digital transformation of procurement
6. Cooperating to procure together

DPS has been an electronic tool in the procurement directives since 2004. In the Directives from 2014, the rules were adjusted in order to better facilitate the usage of DPS and to enable CAs to take the full advantage of the possibilities provided by this instrument. It is clarified that the process should be operated in the form of a restricted procedure. The rules for setting up and running a DPS are now more clearly described in the Public Procurement Directive and Utilities Directives of 2014. The procedure is suitable for dealing with new EOs, new products and volatile prices, which can be used to bridge periods of crisis in a country's economy.

The use of DPS will contribute to all of the six priorities, and will have a direct boost of at least three of them. DPS will increase the competition and a professional set-up. As it is an open system, it will improve access to procurement and SMEs will have easier to participate in the competition. In addition, the DPS will, as a fully electronic process, be a tool to boost the digital transformation of public procurement, both for the CAs and EOs. Standardized documents and procedures will shorten the time used for procuring goods, services and works. The DPS will also be a strategic tool for CAs to minimize the time for procuring “off-the-shelf products”. To cater for the strategic issues, such as improving cross-border market and access for SMEs, interoperability between tendering systems is a prerequisite.

Today many CAs use framework agreements as an efficient tool to purchase goods, services and works.<sup>2</sup> However, the framework agreements also mean that the relevant market will be closed for all other suppliers not part of the FA. Potential suppliers cannot join the competition until they are awarded after the next procurement which can be after a period of up to four years or even longer in certain cases.

Usage of DPS is one way of overcoming this barrier since new suppliers can join continuously. This purchasing technique allows the CAs to have a particularly broad range of tenders and hence to ensure optimum use of public funds through broad competition in respect of commonly used or off-the-shelf products, works or services which are generally available on the market. In order to increase the possibilities for SMEs to participate in a large-scale DPS, it can be divided into different categories of products, works or services.

The goal of this guide is to provide practical information based on experience from different Member States (MS) when using DPS and also to address and clarify some questions that may arise. The benefits and challenges of using DPS in various MS will be described in this guide. Challenges are often related to different interpretations of the text in the directives and each MS's way to comply with the regulations and their

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<sup>2</sup> The process can also be in some parts an electronic process; in the call-off process to order electronically, based on a price list/catalogue and then receive an invoice that can be matched to the order.

targeted approach to deal with questions like “What is the meaning of the statement a “fully electronic process”, and how do we implement the “once-only-principle”?”

After a legal introduction this guide will give a description of how a DPS can be set up and used. Use cases and best practices from the use of DPS in CAs and in some Central Purchasing Bodies (CPBs) in some MSs are presented. A chapter is dedicated to the uptake of DPS, based on statistics from TED and a survey.

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## 4 The legal framework of DPS

In the Public Procurement Directive and the Utilities Directives there are rules regarding the use of DPS.<sup>3</sup> In this chapter we give a brief description of these rules.<sup>4</sup>

A DPS is a two-stage procedure. First the DPS must be set up and the suppliers qualified (admitted to the system) and then there is an invitation to tender on a Specific procurement for those suppliers that have been qualified.

The DPS system shall be operated as a completely electronic process,<sup>5</sup> and shall be open throughout the period of validity of the purchasing system to any EO that satisfies the selection criteria. The Directives refer to selection criteria, but this has to be interpreted as also exclusion criteria. The self-declaration, including both exclusion and selection criteria are applicable.

### 4.1 DPS for purchases generally available on the market

CAs may use DPS for purchases that are generally available on the market and meet the requirements set by the contracting authorities.

A DPS may be divided into categories of products, works or services that are objectively defined on the basis of characteristics of the procurement to be undertaken under the category concerned. Such characteristics may include reference to the maximum allowable size of the subsequent specific contracts or to a specific geographic area in which subsequent specific contracts will be performed.

Where CAs have divided the system into categories of products, works or services they shall specify the applicable selection criteria for each category.

The contract shall be awarded to the tenderer that submitted the best tender on the basis of the award criteria set out in the contract notice for the DPS. Those criteria may, where appropriate, be formulated more precisely in the invitation to tender.

### 4.2 Procedure for the DPS and time limits

The directives describe a DPS to be operated in the form of a restricted procedure. All the candidates satisfying the selection criteria shall be admitted to the system, but the number of candidates to be admitted to the system shall not be limited, which is different from a restricted procedure.

For the purposes of awarding contracts under a DPS, contracting authorities shall:

- Publish a call for competition making clear that a DPS is used;
- indicate in the procurement documents at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the DPS, including how the DPS operates, the electronic equipment used and the technical connection arrangements and specifications;
- indicate any division into categories of products, works or services and the characteristics defining them;
- offer unrestricted and full direct access, as long as the system is valid, to the procurement documents.

The minimum time limit for the receipt of requests to participate shall be 30 days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent. No further time limits for receipt of requests to participate shall apply once the invitation to tender for the first specific procurement under the DPS has been sent.

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<sup>3</sup> Public Procurement Directive Article 34 and Utilities Directive Article 52.

<sup>4</sup> In the use cases below there can also be national regulations that are applicable.

<sup>5</sup> Public Procurement Directive Article 34 and Article 22 (1), (3), (5) and (6).

The examination of those requests to participate should normally be performed within a maximum of 10 working days, given that the evaluation of the selection criteria will take place on the basis of the simplified requirements for documentation that are set out in the procurement directives, for example an ESPD. However, when a DPS is first set up, CAs might, in response to the first publication of the contract notice or the invitation to confirm interest, be faced with such a large number of requests for participation that they would need more time to examine the requests. That should be admissible, provided that no specific procurement is launched before all the requests have been examined. Also, this must be indicated by the CA in the contract notice. The CA can provide the needed days for evaluating the requests to participate in the field "Additional information" in the contract notice.

CAs shall give any EO, throughout the entire period of validity of the DPS, the possibility of requesting to participate in the system under the given conditions. CAs shall finalise their assessment of such requests in accordance with the selection criteria within 10 working days following their receipt. That deadline may be prolonged to 15 working days in individual cases where justified, in particular because of the need to examine additional documentation or to otherwise verify whether the selection criteria are met.

CAs should be free to organise the way in which they intend to examine the requests for participation, for instance by deciding to conduct such examinations only once a week, provided the deadlines for the examination of each request of admission are observed.

CAs shall inform the EO concerned at the earliest possible opportunity of whether or not it has been admitted to the DPS.

### 4.3 Self-declaration/ESPD

At the time of submission of interests to request participation or of tenders the CAs shall accept the ESPD as preliminary evidence in replacement of certificates etc. The rules of the ESPD also apply for DPS.

This also means that CAs may, at any time during the period of validity of the DPS, require admitted participants to submit a renewed and updated self-declaration,<sup>6</sup> within five working days from the date on which that request is transmitted.<sup>7</sup>

Before awarding contracts, CAs shall require the tenderer, to which it has decided to award the contract, to submit up-to-date supporting documents like certificates, statements and other means of proof. If CAs have direct access to national databases for free, they cannot request EOs to submit these documents. The same rule applies if the EOs provide links in the ESPD to national databases, that can be accessed as well by the CAs for free.

The rules regarding self-declarations in the Directives<sup>8</sup> shall apply throughout the entire period of validity of the DPS.

### 4.4 Submit tender and award of contract

CAs shall invite all admitted participants to submit a tender for each specific procurement under the DPS. Where the DPS has been divided into categories of works, products or services, CAs shall invite all participants having been admitted to the category corresponding to the specific procurement concerned to submit a tender.

The minimum time limit for receipt of tenders shall be at least 10 days from the date on which the invitation to tender is sent.

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<sup>6</sup> A self-declaration as provided for in Article 59 (1). Reference to this article in both the Public Procurement Directive and if it shall be used within the Utilities Directive

<sup>7</sup> Public Procurement Directive Article 34 (7) and Utilities Directive Article 52

<sup>8</sup> Public Procurement Directive Article 34 referring to Article 59 (4) to (6) and Utilities Directive Article 52.

## 4.5 Period of validity of the DPS

CAs shall indicate the period of validity of the DPS in the contract notice. They shall in notices inform about any change in the period of validity, using the standard forms stated in the directives. Where the period of validity is changed without terminating the system, the form used initially for the contract notice for the DPS shall be used. Where the system is terminated a contract award notice referred to in Article 50 shall be used. There are no limitations stipulated in the Directives.

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## 5 A graphical view of the functioning of a DPS

### Functioning of a Dynamic Purchasing System

#### Overview

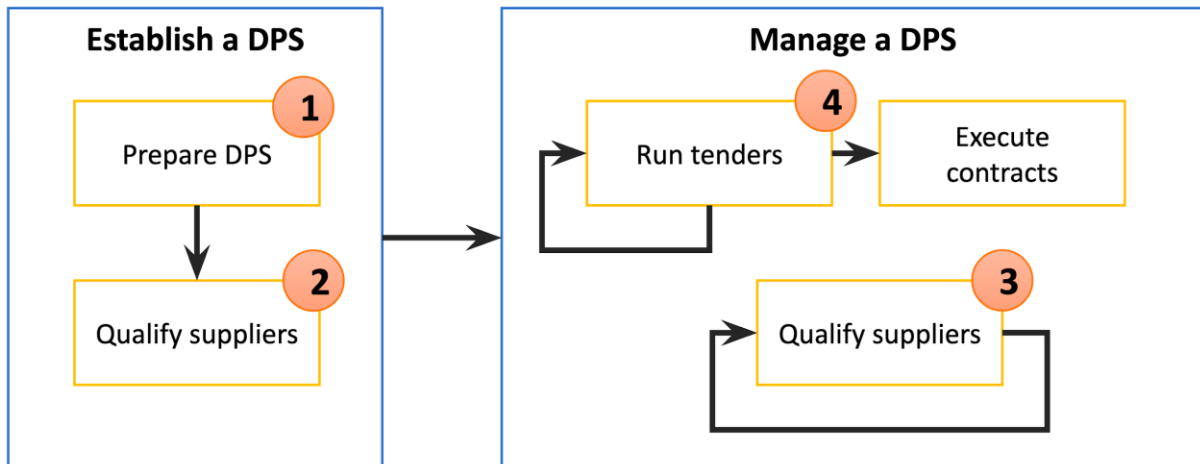


Figure 1: Showing the DPS process how to establish a DPS and to manage it

### Functioning of a Dynamic Purchasing System

#### Detailed view

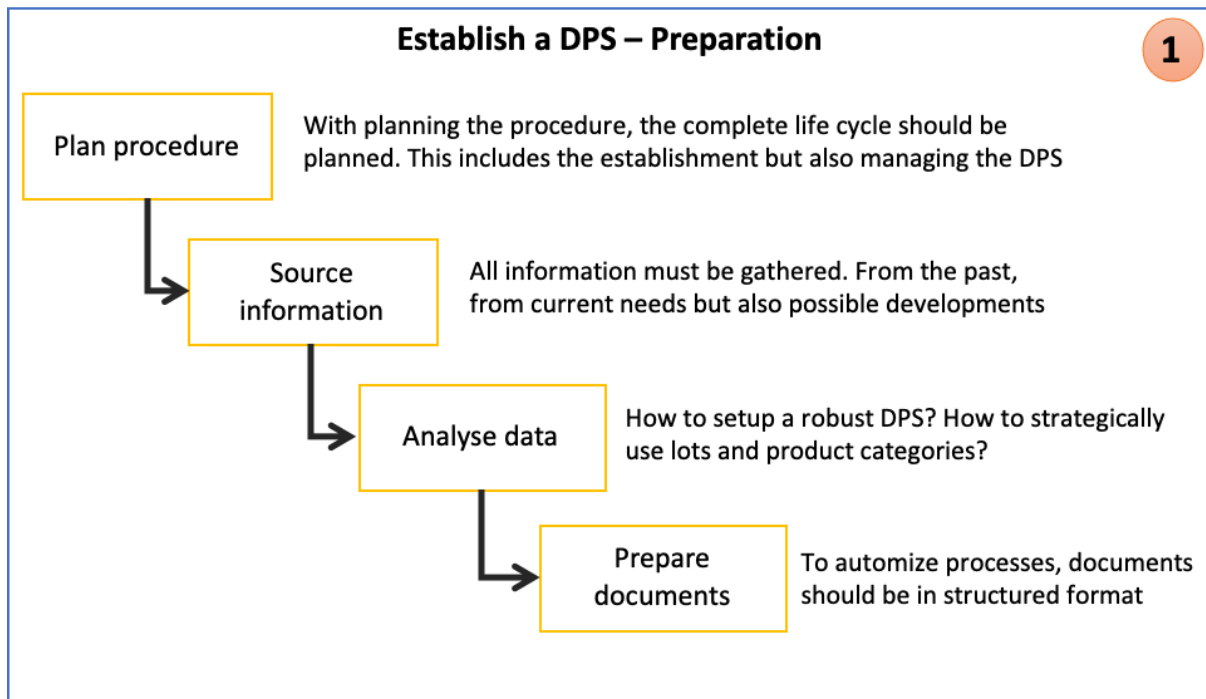
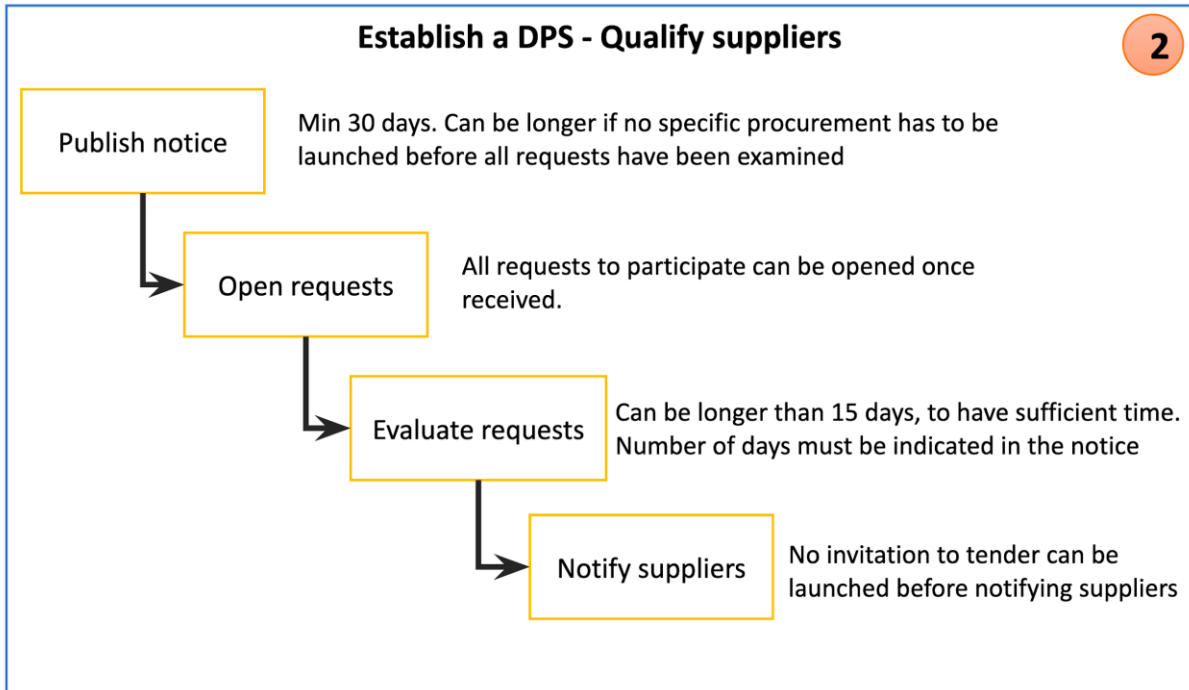


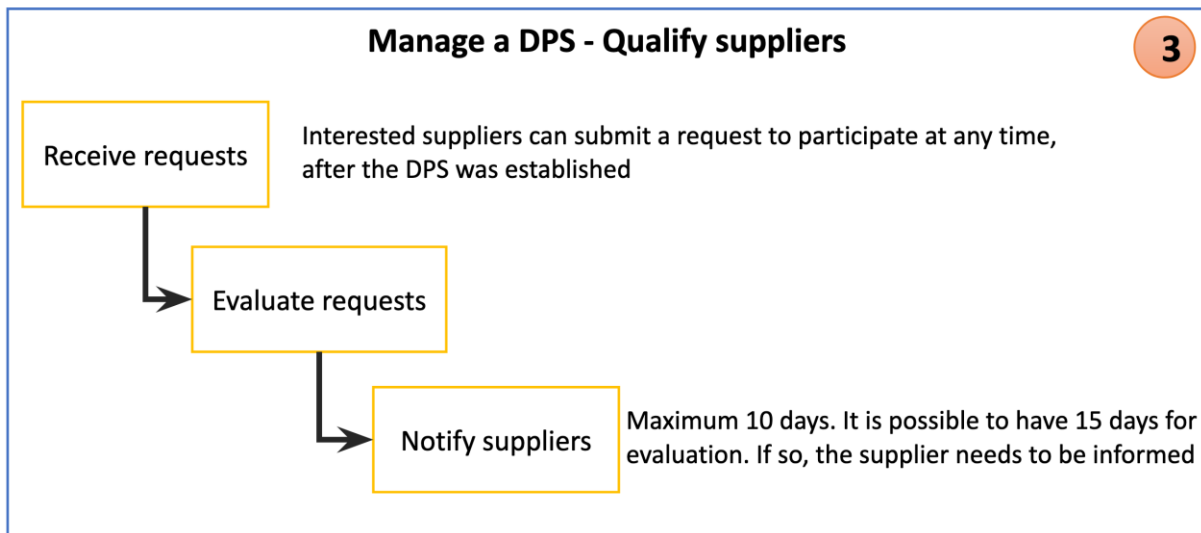
Figure 2: A possible workflow to prepare a DPS

## Functioning of a Dynamic Purchasing System Detailed view



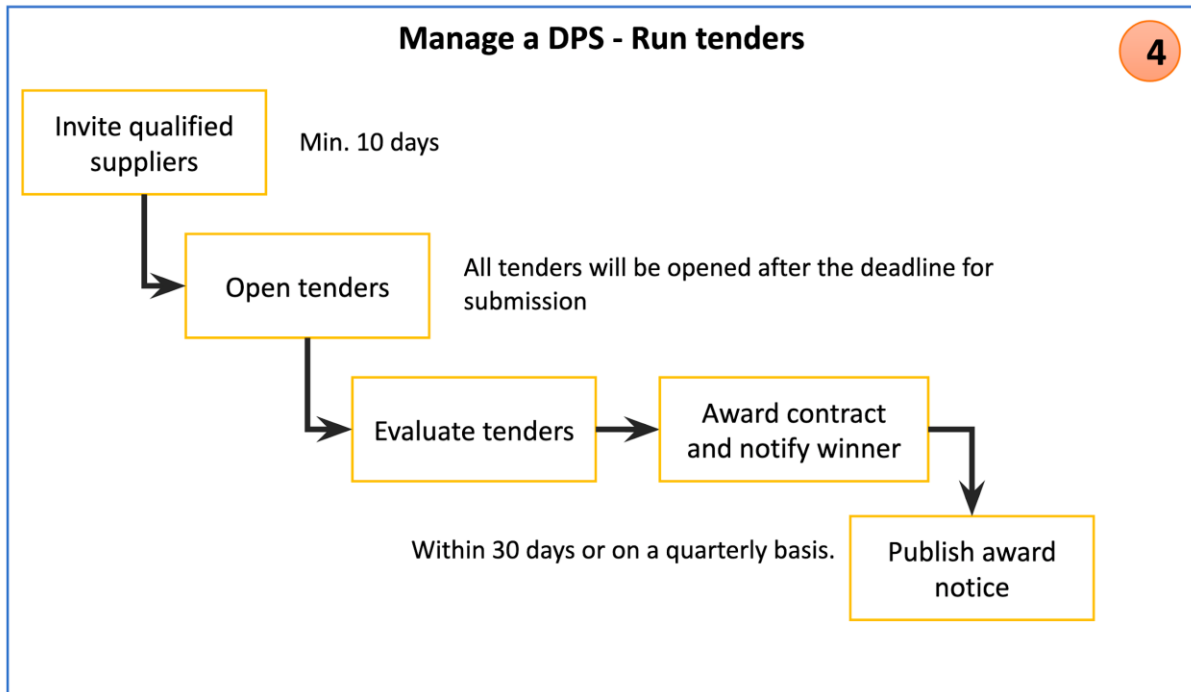
**Figure 3:** Qualification process during the establishment of a DPS

## Dynamic Purchasing System Detailed view



**Figure 4:** Different qualification process during the management of a DPS

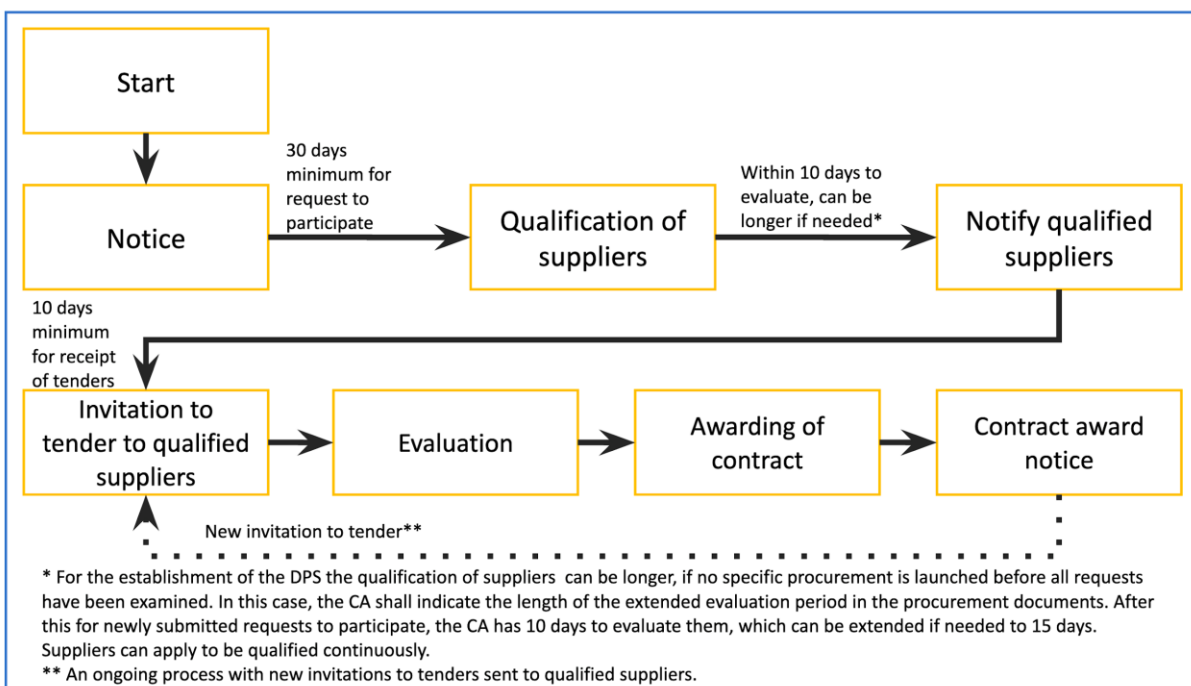
## Functioning of a Dynamic Purchasing System Detailed view



**Figure 5:** Run tenders during a DPS

Another overview of the process is depicted in the following figure.

## Functioning of a Dynamic Purchasing System Process and time frames



**Figure 6:** Showing the DPS process and time frames

## 6 The full electronic process of a DPS

The statement “a completely electronic process” is not clearly defined in the directives, but in the recital (52) there is a description that clarifies some parts. “For that purpose, transmission of notices in electronic form, electronic availability of the procurement documents -and after a transition period of 30 months - fully electronic communication, meaning electronic means at all stages of the procedure, including the transmission of requests for participation and, in particular, the transmission of tenders (electronic submission) should be made mandatory”.<sup>9</sup> It also states that MSs and CAs should remain free to go further if they wish. But it also clarifies that mandatory use of electronic means of communications pursuant to the Directives should not oblige CAs to carry out electronic processing of tenders nor should it mandate electronic evaluation or automatic processing. Furthermore, no elements of the process after the award of the contract should be covered by the obligation to use electronic means of communication, nor should internal communication within the CA.

The term “a completely electronic process” is interpreted differently in various MSs and the usage of electronic means in the procurement processes and general maturity of electronic systems, differ between MS. In the figures above you find the process and the time frames that show the continuum in the process.

As the DPS is open for all suppliers to be qualified (be admitted to the system), there can be many suppliers participating in one procedure and equally many buyers on the other side. As such, it can be safely assumed that there will be potentially thousands of Specific procurements run for one DPS. This can only be done effectively if the processes are completely digital and with structured documents. An efficient qualification process requires interoperability between the tendering systems.

Basically, the transportation of documents is delivered electronically by most of the tendering systems. Several of today’s tendering systems are operating the messaging or transportation of documents between the CA to the EO. In some procurement systems/platforms it is also possible to create and simplify tender documents in the tender system itself, called digital functionality instead of purely exchanging text documents. The systems handle the various deadlines and timeframes in the various procurement processes. Today’s tendering tools are mainly document based, transporting documents and often tailormade files for the specific procurement, often text-based as PDFs or word/excel-files.

One of the challenges in today's process is the lack of compliance to the “once-only principle” and reuse of data. Document based systems do not cater for interoperability and exchange of data between systems or cross-border. To comply with the “once-only-principle” and the interoperability requirements will not be possible in a document-based system, neither within the systems, between tendering systems or from the tendering systems to other relevant systems, such as ordering and economy systems with the ability to transfer catalogues from pre- to post-award and follow up contracts financially.

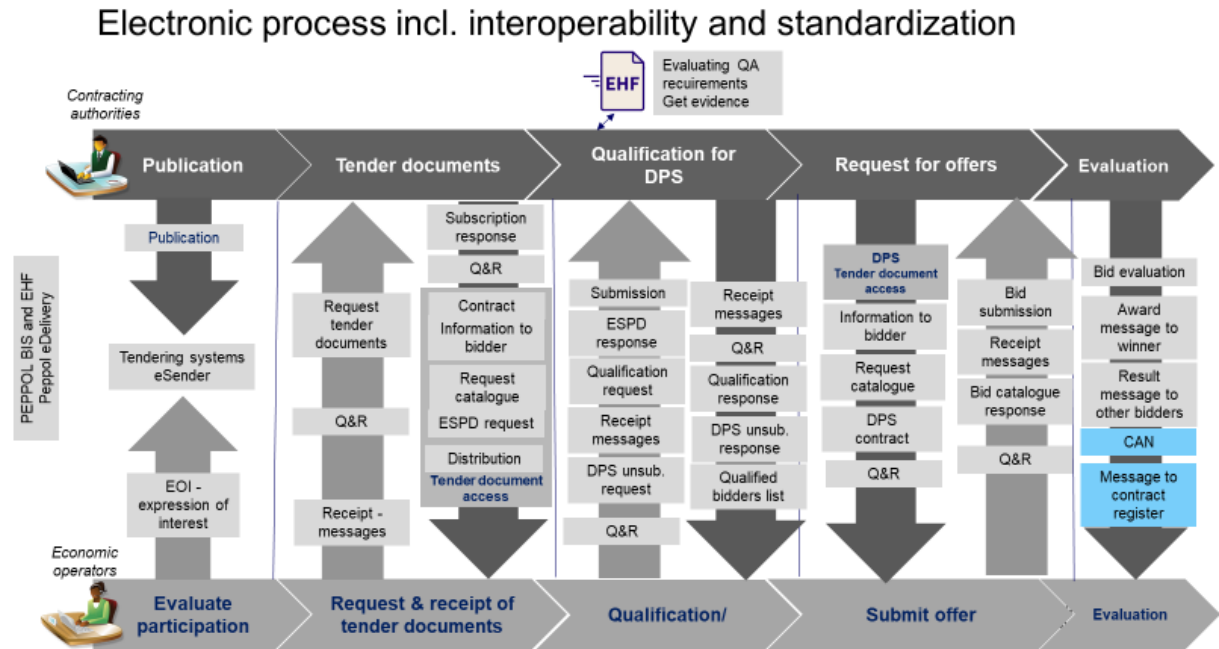
A digital and complete electronic process, using both eDelivery and standardized documents, is a new way of building tender documents. A process-oriented approach will comply with the once-only-principle and reuse data elements in the DPS process. The process approach requires a high degree of interoperability between tendering systems to achieve a completely electronic process.

Using standardized and digital tender documents in a DPS, will contribute to execute a completely digital evaluation of the received tenders. In addition, the use of various building-blocks such as ESPD, get evidence and standardized request catalogues result in effectiveness in processing the DPS-procedure. For the SMEs their workload in reading complex documents will be reduced significantly. Digital tender documents will be more like a questionnaire to be filled in. In this way the DPS will be a tool for increasing the competition, attracting SMEs to compete and boost the use of digital tools.

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<sup>9</sup> Public Procurement Directive Recital (52)

The prerequisite will be a standardized transport infrastructure for the distribution of standardized tender documents in structured formats. In figure 3 the digital DPS process is designed with the documents needed between the CA and EO during a DPS. It is important to underline that there will be a need for competence building in running DPSs and in the digital way of building tender documents for a digital evaluation of all the received tenders towards the predefined evaluation criteria.



**Figure 7:** Showing the DPS process; based on standardized documents and transport infrastructure

## 7 The usage of electronic catalogues in DPS

In the context of DPS, where each acquisition is the result of a “digital” call for competition, electronic catalogues (eCatalogues) can be a powerful tool to enable a simplified and standardized tendering process.

Requesting tenders in highly structured and standardised format facilitates the evaluation process and automatic evaluation speeds-up the time required for managing the tenders. Even if structured formats do not suit all procurement procedures, DPS by definition is a procedure where products and services that are easy to describe and specify are involved and electronic catalogues are specifically suitable.

Moreover, the use of electronic catalogues is particularly suited in DPS where the number of buyers and suppliers involved and of similar procedures is large and the users may not have detailed knowledge of the characteristics of the full range of products and services. In these conditions, the eCatalogue formats and management rules can be a means to “provide” to the users (CAs and EOs) the know-how of the entity that establishes DPS.

In general terms, depending on the aims and the role of the CA that establishes the DPS (CPB or specific CA), electronic catalogues could be adopted following two main operative models:

1. eCatalogues are established and provided by suppliers to respond at each call for competition. The eCatalogue is the template that the CA has provided and the supplier fills it in.
2. eCatalogues are established by suppliers in order to participate in the DPS and are updated to respond at each call for competition.<sup>10</sup>

### 7.1 eCatalogues are established and provided by suppliers to respond at each call for competition

CAs may award contracts based on a DPS by requiring that tenders for a specific contract are to be presented in the format of an electronic catalogue.<sup>11</sup>

The DPS “establishing” CA may provide an eCatalogue template to be used by the CAs and suppliers to manage in a standardized way all the calls for competition launched under the DPS.

The CAs will use the eCatalogue template to describe the product/service requisites and to request all participating tenderers to express specifications and prices in common manner, suitable for a structured analysis and an automatic evaluation. To this extent, the eCatalogue template should be defined in order to qualify the attributes that are relevant as awarding criteria in order to apply scoring rules and algorithms (multiple choice, rank order scaling, rating scale, semantic differential scale,...).

The suppliers will use the eCatalogue templates to fill in and submit their tenders to the calls for competition/Invitations to tender.

This operating model is a very flexible and effective one, since it allows the CAs to customize their call for competition using standardized templates defined in the DPS’ procurement documents and provided by the platform used to run the DPS.

There are experiences of usage of eCatalogues in framework agreements from several countries. In Sweden for example it is used very often. It is an effective process where the contracting authorities define the products that will be procured and easy for suppliers to fill in what they offer, the price etc. It can facilitate the evaluation and also be part of the contract so that the end users can easily find the products and call off from them. Today it is often in Excel format but there are standardisation efforts that will result in eCatalogues in structured formats. Usage of eCatalogues in DPS have the same

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<sup>10</sup> Public Procurement Directive Article 36 (4 and 5) and Utilities Directive Article 54 (4 and 5)

<sup>11</sup> Public Procurement Directive Article 36 (6) and the Utilities Directive Article 54 (6)

potential of benefits as in framework agreements. It is effective for both suppliers and CAs authorities, it is transparent etc.

### 7.1.1 An eCatalogue example: The Italian Pharmaceutical products DPS

In 2011, Consip set up the first pharmaceutical products DPS in Italy. The products eCatalogue is a core component and a key success factor of this DPS.

The eCatalogue is based on a standardized pharmaceutical products description based on four technical characteristics:

1. The Anatomical Therapeutic Chemical (ATC) Classification System, controlled by the World Health Organization;
2. the active ingredient;
3. the dosage form;
4. the dose.

An electronic catalogue (Excel format) with the list of Pharmaceutical products (that includes today over 6.500 items), identified by the four characteristics, is published as part of the Public procurement documents related to establishing the DPS. Only CAs can ask to add products to the Pharmaceutical product list in order to update the eCatalogue.

An example of the eCatalogue structure:

# Lot ID	Sub-lot ID	ATC Code	Active ingredient	Dosage Form	Dose	Measure Unit	Required qty	Base Price
		R05CB02	BROMEXINA CLORIDRATO	Tablet	8 MG	Tablet		
		R05CB02	BROMEXINA CLORIDRATO	Vials	2 ML (2 MG/ML)	Vials		
		R05CB02	BROMEXINA CLORIDRATO	Drops	40 ML (2 MG/ML)	Flagon		
		R05CB02	BROMEXINA CLORIDRATO	Syrup	250 ML (0,8 MG/ML)	Flagon		
		S01BC11	BROMFENAC SODIO SESQUIDRATO	Eyewash	5 ML (0,9 MG/ML)	Flagon		
		N04BC01	BROMOCRIPTINA MESILATO	Capsule	10 MG	Capsule		
		N04BC01	BROMOCRIPTINA MESILATO	Capsule	5 MG	Capsule		
		G02CB01	BROMOCRIPTINA MESILATO	Tablet	2,5 MG	Tablet		
		N05AD06	BROMPERIDOLO	Tablet	5 MG	Tablet		
		N05AD06	BROMPERIDOLO	Drops	30 ML (10 MG/ML)	Flagon		
		N05CD09	BROTIZOLAM	Tablet	0,25 MG	Tablet		

The DPS platform provides specific functionalities to download/upload the eCatalogue spreadsheet, to allow CAs and EOs to perform three phases of the tendering process in the DPS:

1. Pharmaceutical products need gathering: the CA uses the eCatalogue to gather in a standardized format the products needed by the operational units that will use the products (ex. hospitals units)
2. Required products definition: the CA use the eCatalogue template to describe the products requisites and to request all participating EOs to express specifications and prices in the standardized format
3. Tender presentation: the suppliers will use the eCatalogue templates provided by the CA to fill in and submit their tenders



The eCatalogues uploaded by all the participating EOs are automatically processed by the platform to define the tender ranking (the award criterion is lowest price) for each tender lot.

Considering that usually each pharmaceutical product is a tender lot, each specific procurement under the DPS is generally composed of hundreds of lots, each consisting of a specific combination of the above mentioned four dimensions.

#### 7.1.2 eCatalogues are established by suppliers in order to participate in the DPS and are updated to respond at each call for competition

**Public Procurement Directive Article 36 (6):** CAs may also award contracts based on a DPS in accordance with point (b) of paragraph 4 and paragraph 5 provided that the request for participation in the DPS is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the CA. That catalogue shall be completed subsequently by the candidates, when they are informed of the CAs intention to constitute tenders by means of the procedure set out in point (b) of paragraph 4.

**Public Procurement Directive Article 36 (4):** Where a framework agreement has been concluded with more than one EO following the submission of tenders in the form of electronic catalogues, CAs may provide that the reopening of competition for specific contracts takes place on the basis of updated catalogues. In such a case, CAs shall use one of the following methods: (a) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the contract in question; or (b) notify tenderers that they intend to collect from the electronic catalogues which have already been submitted the information needed to constitute tenders adapted to the requirements of the contract in question; provided that the use of that method has been announced in the procurement documents for the framework agreement.

**Public Procurement Directive Article 36 (5):** Where CAs reopen competition for specific contracts in accordance with point (b) of paragraph 4, they shall notify tenderers of the date and time at which they intend to collect the information needed to constitute tenders adapted to the requirements of the specific contract in question and shall give tenderers the possibility to refuse such collection of information. CAs shall allow for an adequate period between the notification and the actual collection of information. Before awarding the contract, CAs shall present the collected information to the tenderer concerned so as to give it the opportunity to contest or confirm that the tender thus constituted does not contain any material errors.

In this model the platform used to run the DPS allows the CAs to automatically generate tenders in relation to specific purchases on the basis of previously transmitted electronic catalogues.

Since the tenders have been collected by the (system of) the CA, finally the collection must be approved by the awarded supplier. Doing so, the EO is able to verify that the tender thus constituted by the CA does not contain any material errors. Where material errors are present, the EO should not be bound by the tender generated by the CA unless the error is corrected.

This operating model could be usefully adopted when it is possible to have an accurate definition of the products/services to be acquired into the DPS in order to allow:

- a sustainable catalogue management activity on the supplier's side and a detailed the prefilled eCatalogues;
- calls for competition with a high level of timeliness and simplicity both for buyers and sellers.

With the adoption of "previously defined" suppliers' eCatalogues, the question arises if these eCatalogues should or should not be visible to the CAs and EOs acting into the DPS.

Awarded contracts can be made publicly available to increase visibility. This is underlined also by Article 36 (6) which states that eCatalogues in DPS shall be completed



subsequently by the candidates, when they are informed of the CAs intention to constitute tenders by means of the procedure set out in point (b) of paragraph 4. In practice filling out eCatalogues from the ground up can be a time-consuming process and therefore can be an issue to do within short deadlines permitted in a DPS. Notwithstanding the minimum time limits, a CA should always set a fitting time limit for the Specific procurement. Therefore, it is highly advantageous for suppliers to maintain their eCatalogues in the background. Non-active eCatalogues should neither be visible nor accessible to CAs.

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## 8 Benefits and challenges of a DPS

The Directives refer to several incentives for the usage of DPS. This purchasing technique allows the CAs to have a particularly broad range of tenders and hence to ensure optimum use of public funds through broad competition.<sup>12</sup> Compared to framework agreements DPS is one way of giving possibilities for suppliers to join continuously and participate in calls for competition. The market is not closed for a period that can be up to four years. It increases the possibilities for SMEs to participate since a DPS can be divided in lots and also there is a possibility to submit a tender but no obligation to do it. Therefore, the DPS gives freedom to the SMEs to decide on whether they want to participate in a specific procurement procedure. As well they can decide if they want to participate only for a specific lot.

Below is a list of incentives for the usage of DPS both for CAs and suppliers. Since DPS can be used also by CPBs, which also is the case in several countries, we have also described specific topics when the DPS is run by a CPB. More detailed conclusions based on experiences are described in the use cases.

### 8.1 Incentives and benefits for contracting authorities

- A possibility to get more tenders from a wider circle of EOs when calls for Specific procurements are done.
- DPS can be naturally divided into smaller lots or categories with Specific Procurements done within these categories. A series of smaller individual purchases (compared to the entirety of the DPS or a FA covering the same area) will presumably make it more attractive to SMEs to participate.
- A DPS is open for new suppliers during the duration. Not a closed market during the time when the DPS is open. This gives the possibility to have more suppliers than a framework agreement or contract, which are typically done with one or a few suppliers. There is no limitation on the number of potential suppliers on a DPS.
- A possibility to have the advantage of products on a market under quick development. Since Specific procurements under a DPS are done continuously the products can be updated with each specific procurement. A framework agreement with specific products does not always give this possibility. Updated products can lead to a general improvement in the possibilities for procurement of innovative goods or services. It can also mean improvement in the competence of actors involved in the procurement process.
- The timeframe to make specific procurements are very short compared to other procedures. If there are enough qualified suppliers it can mean that the process to procure goods and service can be very efficient. Having qualified suppliers can be seen as a simplification of the procurement process, which makes the end-users more satisfied.
- Usage of an efficient procurement tool as DPS which is made fully electronically and with possibilities to have some parts in an automated way can give a reduction of costs in the process.
- Possibility to precisely formulate the functional requirements for each specific procurement procedure as well as the awarding criteria. The precision should be in accordance with the initial procurement documents of this DPS. As an example, for one specific procurement the CA could decide to rate the speed of a notebook higher, while for another one the weight could be more important.
- No limitation of validity time of a DPS.
- There can be a reduction of risk to have suppliers ready for submitting tenders compared to a framework agreement where there is only one supplier and that supplier cannot deliver due to insolvency/bankruptcy, difficulties to deliver the asked volume etc.

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<sup>12</sup> Public Procurement Directive Recital (63) and Utilities Directive Recital (73)

- eCatalogues can be used and can make the process effective.
- To have suppliers that are interested in this digital tool also can give the effect of also interested suppliers in other effective processes such as eCatalogues, eOrders and eInvoicing.
- Continuous publication of demand (through the Specific procurements) and results (through contract award notices) can increase transparency of the procurement process.

## 8.2 Challenges, potential negative consequences for contracting authorities

- There is no obligation for a qualified supplier to submit a tender in the phase 2, specific procurements. So even if there are many suppliers qualified it doesn't mean that there necessarily will be any tenders. Therefore, for critical goods or services it can be safer with a contract or framework agreement which mandates the supplier(s) to deliver in accordance with the contract.
- DPS can be suitable for markets with a great number of suppliers but there can sometimes be no incentives to respond to specific procurements if there are small chances of winning the contract.
- Time Consuming. There can be many suppliers that want to become qualified. This can be the case especially if the requirements in the DPS are not very much specified (for example IT equipment without a more precise description of the requirements). An efficient and more automated way of qualifying is important.
- No certainty on the final price compared to what is possible in a framework agreement with one supplier or with several suppliers and cascade instead of reopening of competition. Prices can vary compared to when CAs use framework agreements.
- The result in a DPS can be that different suppliers can deliver goods or services since new suppliers can be qualified and participate in the specific procurement. This may be a problem especially in the case of critical goods and services when a contract party that is well known and has the logistics in place to deliver the goods. When eOrdering is introduced, different EOs for ordering and delivering might not be an efficient process.
- Lack of experience can be an obstacle and need for knowledge is important. CAs need to be supported when using the new tool.
- Fear that the EOs in the market do not have enough knowledge or interest in participating in DPS. This means that the CAs have to be ready to prepare the market for DPS as a process that also has advantages for the suppliers.

## 8.3 Incentives and benefits for suppliers

- A more open market. Gives possibilities to deliver continuously and not be dependent on winning a contract or a framework agreement, which closes the market for a specific period.
- The time from being qualified to have the possibility to win a specific procurement can be short.
- DPS can be divided into categories based on e.g., specific products or geographical areas where it is more interesting for some suppliers to deliver than for others.
- Also, the usage of dividing specific procurements into lots can be beneficial.
- There is no requirement for the supplier to guarantee goods or services when applying to become qualified, it is enough at the time when a specific procurement is launched.
- Even if not being qualified the first time, it is possible to re-apply and become qualified later if the criteria then are fulfilled.
- An efficient process since it is fully electronic and no negotiations.
- eCatalogues can be used and this can be effective for the suppliers to fill in.
- A transparent procurement process.

## 8.4 Challenges, potential negative consequences for the suppliers

- Not a large experience in the usage of DPS.
- Using DPS requires good support from the IT solution used, if there is a lack of experience.
- With a great number of suppliers and not very precisely specified criteria there might be no incentive to respond to be qualified and to submit tenders if there can be small chances to win a contract.

## 8.5 Specific benefits and challenges related to CPBs

In the case of a CPB, the question is which part of the DPS it wants to manage. In the first part of the DPS, in practice, the participation phase is controlled by the CPB, while in the second part, the conduct of specific procurements is also monitored. In case the CPB wants to also monitor the specific procurements, they need to plan much more precisely to take advantage of economies of scale and achieve appropriate prices for CAs. The IT-support of the second part, in the case of the application of a catalogue, the quality of the catalogue management or just different procurement platforms/solutions determines the success of the CPB.

From the CPB's perspective, usage of both DPS and framework agreements can be an effective means to offer CAs a comprehensive range of e-Procurement tools, to satisfy their different "buying needs".

When a DPS is established by a CPB to be used by a wide range of CAs, it can be designed and managed to standardize and simplify the way CAs and EOs meet in the public procurement market, leveraging on the CPB's large procurement and operational capabilities.

Indeed, for the CPBs, the platforms adopted to run the DPSs are powerful tools to make available to CAs their know-how about procurement procedures, market mechanisms and products/services characteristics.

To get the best from DPS's adoption, CPBs have to develop specific capacities to:

- offer a relevant amount of information, education and support needed by the users to use the new procedure
- develop and manage the ICT platform that enables the DPS operations.

A key challenge for CPBs to face when the DPS adoption evolves to a more "mature" phase, is the need to balance the high degree of standardization required to reach as much operational simplification and automation as possible and the requests of the CAs for a very flexible DPS that provides the largest set of tender customization functions.

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## 9 The uptake of DPS based on TED data

The following data is coming from TED and shows the application of DPS under the Public Procurement Directive and Utilities Directive. The data includes all contract notices from the two Directives until April 2020. It is important to notice that all data was taken into consideration if the buyer indicated in the notice that it was of type DPS.

### 9.1 DPS in comparison to all procedures and FA

The table shows the comparison of all procedures, compared to FA and DPS.

Type/Year	2015	2016	2017	2018	2019	2020
<b>All</b>	60	66981	158529	188066	215003	218715
<b>FA</b>	5	17083	34623	40736	45203	45051
<b>DPS</b>	0	145	234	442	551	893

Looking at the number of DPS compared to FA, it is clear that DPS does not play a significant role compared to FA which accounts for roughly a fourth of all procedures. Nevertheless, while the number of procedures stayed similar between 2019 and 2020, the number of DPS was rising and the number of FAs decreasing.

### 9.2 The Classical vs the Utilities Directives

The table shows the number of occurrences between the two Directives for all procedures.

Directive/Year	2016	2017	2018	2019	2020
<b>2014/24/EU</b>	61489	144243	170263	194110	198010
<b>2014/25/EU</b>	5492	14286	17803	20893	20705

The table below shows the use of DPS procedures for the two Directives.

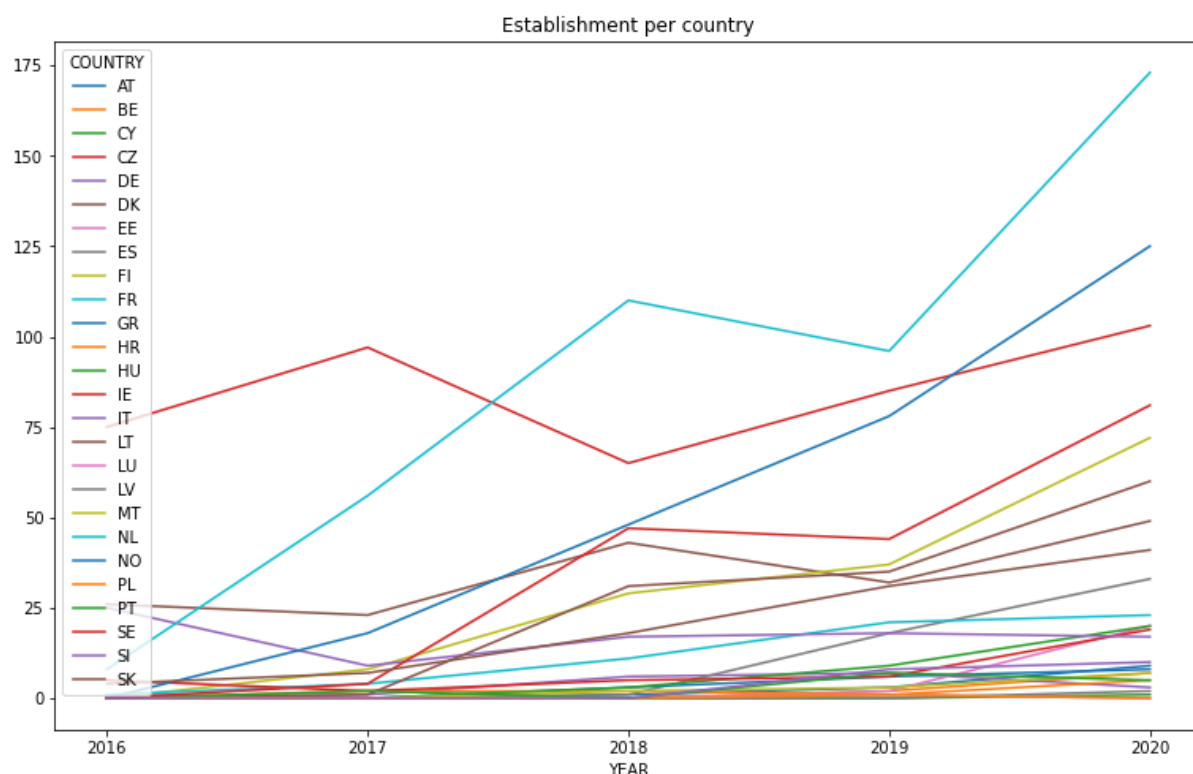
Directive/Year	2016	2017	2018	2019	2020
<b>2014/24/EU</b>	145	233	413	508	813
<b>2014/25/EU</b>	0	1	29	43	80

The Utilities started with a delay of 1 year later than the Classical. In relation to the Classical Directive, the proportion of DPS is the same as under the Utilities.

### 9.3 How Member States are using DPS?

The table gives the number of DPS usages per Member States per Year.

Country/Year	2016	2017	2018	2019	2020	All
<b>AT</b>	1	0	1	3	9	<b>14</b>
<b>BE</b>	0	0	0	2	7	<b>9</b>
<b>CY</b>	0	0	0	0	1	<b>1</b>
<b>CZ</b>	75	97	65	85	103	<b>425</b>
<b>DE</b>	0	1	6	7	3	<b>17</b>
<b>DK</b>	26	23	43	32	49	<b>173</b>
<b>EE</b>	0	0	0	2	20	<b>22</b>
<b>ES</b>	0	0	1	18	33	<b>52</b>
<b>FI</b>	0	8	29	37	72	<b>146</b>
<b>FR</b>	1	4	11	21	23	<b>60</b>
<b>GR</b>	0	0	3	6	8	<b>17</b>
<b>HR</b>	0	2	2	1	5	<b>10</b>
<b>HU</b>	0	0	3	9	20	<b>32</b>
<b>IE</b>	5	2	5	6	19	<b>37</b>
<b>IT</b>	25	9	17	18	17	<b>86</b>
<b>LT</b>	0	1	31	35	60	<b>127</b>
<b>LU</b>	0	0	0	1	0	<b>1</b>
<b>LV</b>	0	0	0	0	2	<b>2</b>
<b>MT</b>	0	0	2	3	7	<b>12</b>
<b>NL</b>	8	56	110	96	173	<b>443</b>
<b>NO</b>	0	18	48	78	125	<b>269</b>
<b>PL</b>	0	0	0	1	0	<b>1</b>
<b>PT</b>	0	2	0	7	5	<b>14</b>
<b>SE</b>	0	4	47	44	81	<b>176</b>
<b>SI</b>	0	0	0	8	10	<b>18</b>
<b>SK</b>	4	7	18	31	41	<b>101</b>
<b>All</b>	<b>145</b>	<b>234</b>	<b>442</b>	<b>551</b>	<b>893</b>	<b>2265</b>



**Figure 8:** Establishment of DPS per country and per year

The early adopter was Czech Republic. The followers were the Netherlands, Finland and Norway. But the figures show very clearly that the majority of countries are still not accustomed to using DPS. In total 1643 DPS were started by all countries. The figure reflects the table above.

#### 9.4 How are lots used in DPS?

The following table shows the number of lots compared to the occurrences.

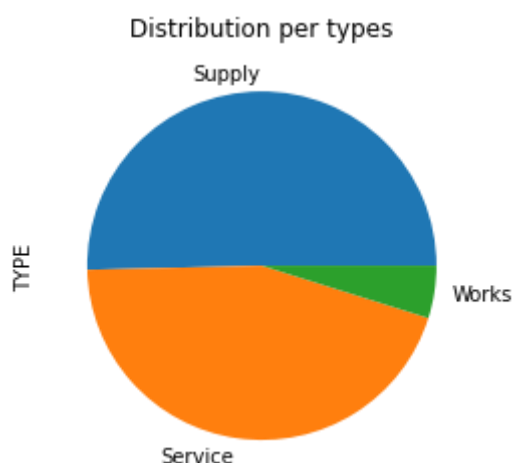
No of lots	Occurrences
1 lot	1923
2 lots	77
3 lots	72
4 lots	31
5 lots	29
6 - 10 lots	72
11 - 20 lots	37
21 - 50 lots	19
51 - 100 lots	3
More than 100 lots	2

The vast majority of DPS procedures have only one lot. There are two procedures with more than 100 lots (140 lots and 459 lots). The procedure with 459 lots is about pharmaceutical products (<https://ted.europa.eu/udl?uri=TED:NOTICE:152525-2020:TEXT:EN:HTML>).

## 9.5 What type of contracts were used in DPS?

The following table shows the number of lots compared to the occurrences. It will not be distinguished between the Classical and the Utilities Directives.

Type	Occurrences	Percentage
Service	1014	45%
Supply	1141	50%
Works	110	5%



**Figure 9:** Establishment of DPS per type

More than 50% of the DPS are for Services. Only roughly 5% of the procedures are of type Works.

## 9.6 What is the duration of DPS?

The duration is given in years.

Years	Occurrences
smaller or equal to 1 Year	132
smaller or equal to 2 Years	184
smaller or equal to 3 Years	175
smaller or equal to 4 Years	858
smaller or equal to 5 Years	168
smaller or equal to 10 Years	487
smaller or equal to 20 Years	61
smaller or equal to 50 Years	9
smaller or equal to 100 Years	136
Undefined	223

Most durations have a maximum of 4 years which is the maximum numbers of years for FA. Second place comes up to 10 years. There are also durations given that are up to



100 years. Undefined means that for that the entry provided in the notice, this could not be processed into months.

## 9.7 What CPV codes were used?

The following table looks into the 20 top CPV codes. To have a better view, the CPV codes were put into clusters of their main divisions.

	Main division	Occurrences
Office and computing machinery, equipment and supplies except furniture and software packages		338
IT services: consulting, software development, Internet and support		211
Education and training services		184
Transport equipment and auxiliary products to transportation		162
Construction work		137
Business services: law, marketing, consulting, recruitment, printing and security		126
Furniture (incl. office furniture), furnishings, domestic appliances (excl. lighting) and cleaning products		125
Architectural, construction, engineering and inspection services		125
Medical equipments, pharmaceuticals and personal care products		98
Radio, television, communication, telecommunication and related equipment		71
Transport services (excl. Waste transport)		56
Security, fire-fighting, police and defence equipment		51
Petroleum products, fuel, electricity and other sources of energy		50
Agricultural, forestry, horticultural, aquacultural and apicultural services		43
Construction structures and materials; auxiliary products to construction (except electric apparatus)		33
Health and social work services		31
Software package and information systems		21
Laboratory, optical and precision equipment (excl. glasses)		21
Clothing, footwear, luggage articles and accessories		21
Food, beverages, tobacco and related products		20

Office supply and IT equipment seem to be the top category, followed by education and training services.

A question was raised whether CPV codes could be used for categorizing lots. When analysing the data, it turns out that in practice this is not done. Even when a procedure was split into several lots, the CPV number was always the same. This might change with eForms, as it is much more driven by the use of lots.

## 9.8 How successful are DPS?

With a total number of lots of 8986 which were indicated in the contract notices, only 9291 contract award notices were published. Unfortunately, the data set does not reveal if data was aggregated or not. Therefore, it is good to look into the number of tenders submitted in such procedures.

Number of tenders	Occurrences
1	2153
2	1342
3	963
4	629
5	433
...	...
106	1
109	1
159	1
217	1
999	1

Most of the specific procurements had received only one offer. But it was indicated by public buyers that in a few cases, more than 100 of tenders were received. Maybe the high number of tenders is a result of aggregating the information in CANs.

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## 10 The DPS questionnaire and results

The purpose of the DPS questionnaire was to become familiar with the opinions of the stakeholders and to share their experience with the public. The questionnaire was completed by 37 respondents from 20 countries (Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Malta, the Netherlands, Norway, Portugal, Slovakia, Slovenia, Sweden). The respondents were from ministries, CPBs, e-public procurement service providers and from contracting authorities and entities. Based on their answers we can get an impression on the practice of using DPS in the MS.

Respondents mainly encounter DPS above the EU threshold, although its use is spreading below the EU threshold. In most MSs, the rules are the same below and above the EU threshold with less administrative obligations below the EU threshold introduced by the legislators. DPS is typically used by contracting authorities, with more growth potential for the utilities sector and CPBs.

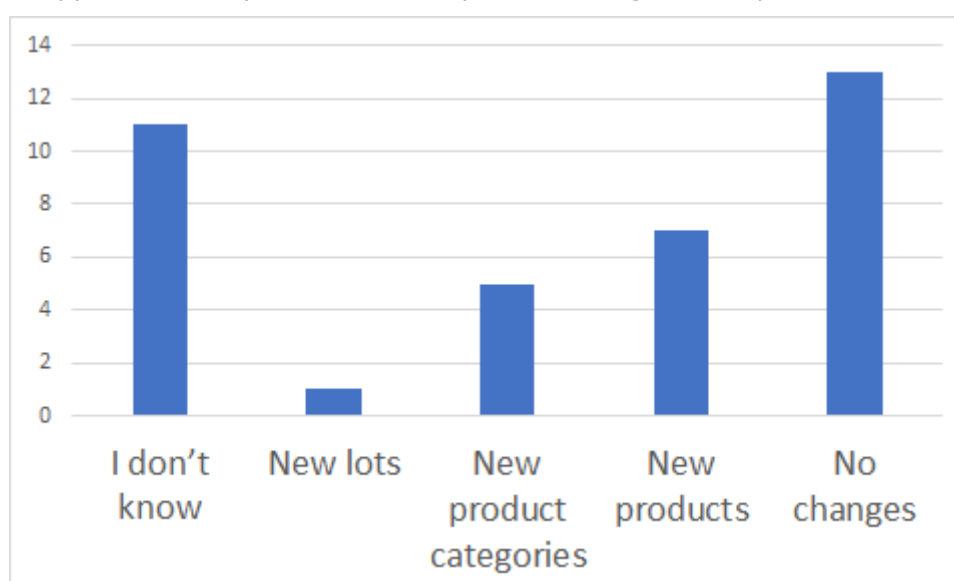
The majority of the respondents of the survey have DPS guidelines to help market players apply DPS. Moreover, there is already remedy experience in Denmark, Finland, Germany, Ireland, Italy, Malta, the Netherlands and Slovakia.

Regarding the flexible use of DPS, twice as many respondents believe that one specific procurement can cover multiple LOTS. The length of the DPS is typically less than 5 or maximum 5 years which may be related to the difficulty of estimating the value of public procurement regarding longer terms.

DPS is either supported by a single central service provider within a MS or more service providers are available. This is important because support for the relatively new model is still tied to a central service provider, which shows that DPS support is not necessarily initiated by market players first, but with government support.

Regarding the reduction of administrative burden, most differences occur in the cases of requesting and evaluating ESPD. The majority evaluates ESPD manually or partially manually. The results of the survey show mixed results whether ESPD is only requested in the qualification phase or in the specific procurement in addition to the qualification phase. The need for ESPD in every specific procurement increases the level of administration although gives a sense of certainty. This question of interpretation generates fewer problems where the examination of certificates – on which the ESPD statement is based – is already made automatically.

The opinion of the half of respondents (except for “I don't know” answers) is that DPS cannot be supplemented by new lots, new product categories or products.



**Figure 10:** Supplementing the DPS - based on the questionnaire

In the survey, some MS indicated that negotiations are used in a DPS, though this is not allowed under the Public Procurement Directive, see specific topic on “Are negotiations for awarding contracts under DPS allowed?”.

One-third of the respondents use a catalogue compared to the whole group of respondents. The use of the catalogue is becoming more widespread, but for the time being, there was no univocal answer to such interpretational questions whether the contracting authority should request an eCatalogue template. There are MS-s where it is already requested in the qualifications phase and there are MS-s where it is requested only after the qualification phase.

The main benefits of DPS, according to the respondents, were the followings:

- A more open market within the DPS. No maximum number of suppliers.
- The time span from qualification to win a contract is short.
- No need for the supplier to guarantee goods or services when applying to be qualified and only have the possibility to submit a tender.

The disadvantages of DPS were highlighted by the following findings:

- Respondents have no experience because it is a rather new procurement tool.
- If the qualification criteria are not very precisely specified or they are too strict, this does not motivate tenderers to apply for DPS if there are small chances to win.
- It requires good support from the service provider, if lack of experience.

Despite the benefits of the DPS, respondents said that at the time of COVID-19, framework agreement procedures were rather preferred, which may have been due to the fact that it was easier to order directly from existing framework agreements than to re-compete in DPS. As a general conclusion, based on the questionnaire, it can be stated that respondents are interested in the topic and look forward to guidance on their legal interpretation uncertainties.

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## 11 Questions and answers

As DPS is a tool that has not yet reached a broad uptake some questions arose when working on the guidelines. We worked on those questions and tried to provide answers. In some cases, where we were not sure, the legal team of DG GROW supported us. There are, however, questions that can only be answered once there is more case law regarding DPS.

### 11.1 How should the estimated value be calculated?

The Procurement Directive states that in the case of DPSs the estimated value should be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the DPS.<sup>13</sup>

It has to be taken into account that the DPS represents a special technique/instrument for electronic and aggregated procurement that introduces specific rules to public procurement procedures in which the CA only knows roughly estimated quantities of the goods, services or works procured in the course of DPS validity at the time of setting up the DPS.

The CAs with a consistent need can determine the estimated value in a way that they calculate the estimated value for one year and then extrapolate it to the number of years the DPS should run. The estimated value should always be a specific assessment.

When a DPS is established by a CPB, additional CAs are usually able to join the DPS mid-term, if they are mentioned in the call for competition. The CPB should consider this when calculating the estimated value.

### 11.2 How should the estimated value be calculated in case the DPS is divided into lots?

Also, in regard to DPS, it could be considered that in the case of lots' division, the estimated value of the DPS as a whole should represent the sum of estimated values of specific lots.

In case the DPS is divided into lots, the estimated value should be calculated both at the level of an individual lot and as the DPS as a whole. For the reasons mentioned in the answer to the previous question, the estimated value should represent the maximum amount to be perceived to be awarded in the total term of the DPS.

### 11.3 When must the CA allocate the budget for the contracts that it will award in the DPS?

The contracting authority must set its budget in advance before launching a specific procurement.

### 11.4 Can a CA join an existing DPS, where they have not been mentioned in the notice upfront?

No, CAs cannot join a DPS. However, if a DPS is operated by a CPB, CAs can join, if this is mentioned in the call for competition setting up that DPS.<sup>14</sup>

### 11.5 Can individual CAs be removed after the establishment of a DPS?

No. The scope of allowed modifications and corresponding notifications is limited regarding the usage of DPS. There are rules and corresponding notifications for the

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<sup>13</sup> Public Procurement Directive Article 5 (5) and Utilities Directive Article 16 (5)

<sup>14</sup> Public Procurement Directive Article 37 (1) and Utilities Directive Article 55 (1)

extension of the period of the concerned DPS or the termination of the DPS. Should other changes be needed, including as regard to the initially identified buyers (change or addition of buyers), then the concerned DPS would need to be set up through a new call for competition.

### **11.6 Are the rules regarding time-limits for the restrictive procedure applicable also for a DPS?**

No, even if a DPS shall follow the rules of the restricted procedure the reduced time-limits of Article 28 (6) do not apply to the DPS.

The specific time-limits applicable to the DPS are laid down in the Public Procurement Directive. The first sentence in Article 34 (2) says "Notwithstanding Article 28, the following time shall apply..." This is furthermore confirmed by the subsequent provisions of Article 34 (2) 2nd subparagraph whose point (b) (time limit applicable to the receipt of tenders) explicitly refers to Article 28 by providing that, where appropriate, Article 28 (4) shall apply but that Article 28 (3) and (5) shall not apply; but whose point (a) (time limit for the receipt of participation requests) does not refer to any provision of Article 28. On its part, Article 28 (6) explicitly refers as a condition for its application to the time limits laid down in Article 28 itself and that are impracticable due to a state of urgency duly substantiated.

### **11.7 During the setup-phase can a CA temporarily close the DPS for new applicants after the initial deadline has expired?**

The recital (64) of the Public Procurement Directive and the recital (74) of the Utilities directive gives an answer on this.<sup>15</sup>

According to the recital "the examination of those requests to participate should normally be performed within a maximum of 10 working days, given that the evaluation of the selection criteria will take place on the basis of the simplified requirements for documentation that are set out in this Directive. However, when a dynamic purchasing system is first set up, contracting authorities might, in response to the first publication of the contract notice or the invitation to confirm interest, be faced with such a large number of requests for participation that they would need more time to examine the requests. That should be admissible, provided that no specific procurement is launched before all the requests have been examined. Contracting authorities should be free to organise the way in which they intend to examine the requests for participation, for instance by deciding to conduct such examinations only once a week, provided the deadlines for the examination of each request of admission are observed.

The answer is therefore yes, the CA should have the possibility to evaluate the participation requests received within the corresponding time limit (minimum 30 days) without the obligation to evaluate requests received after the deadline. It is important that during this examination, no specific procurement can be launched. Furthermore, CAs have to indicate in the procurement documents the length of the extended evaluation period they intend to apply. After the initial evaluation process, the CA can again receive new applications.

### **11.8 When establishing the DPS, is it possible to evaluate requests for participation, without waiting for the deadline?**

The answer is that as for the initial submissions to set up the DPS, there is nothing in the Public Procurement Directives that would prevent the CA from carrying out the evaluation as soon as requests to participate are received, as long as the other conditions set by the Public Procurement Directives are respected (in particular, the minimum time limit for receipt of requests to participate have been evaluated).

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<sup>15</sup> Public Procurement Directive Recital (64) and Utilities Directive Recital (74)

Figure 3 which is about the qualification process during the establishment of a DPS, explains that all requests to participate can be evaluated even before the initial deadline for submitting requests.

## 11.9 How to differentiate between DPS and framework agreement?

Comparing the framework agreement procedure and the DPS, it can be seen that both methods can provide flexibility, depending on the needs of the CA. Framework agreement is more rigorous, as the CA has the freedom to define the obligations for the suppliers to submit bids, while in the case of DPS, the supplier can freely choose when to submit a tender.

In the framework agreement the numbers of EOs are limited, while in the DPS EOs can join continuously, so the CA cannot prevent new EOs with a numerical limit. This means that there can be new EOs that can be awarded contracts and it also means good possibilities for increased competition. It also gives opportunities for EOs.

The CA can make bidding mandatory in the Mini-tender in the case of the framework agreement, but not in the DPS.

In framework agreements, winning EOs will have a higher expectation of certainty of the earnings, while this is not the case for DPS.

The usage of eAuction and eCatalogues are possible for both methods.

In the framework agreement, the technical specification will be constant unless specifically handled in the Framework agreement, while in the DPS it can be formulated at the time of the Specific procurement taking into account new developments.

	Framework agreements	DPS
Fixed price (not using Mini-tenders)	Possible	No
Continuous accession of economic operators	No	Yes
Limitation of the number of economic operators	Yes	No
Usage of eAuction	Yes	Yes
Usage of electronic catalogues	Yes	Yes
Adjust technical specification to address new developments	No	Yes
Reopen competition procurements	Yes	Yes (always)
Selection criteria may vary	No	No
Lots can be defined	Yes	Yes
Product categories can be defined	Yes	Yes

### 11.10 Can DPS be combined with framework agreement?

The procurement directive does not provide guidance on whether DPS can be combined with framework agreements or not. There are no articles or anything mentioned in the preamble that explicitly allows the award of a framework agreement instead of a contract through DPS but neither are there any regulations against it.

Hungary and Italy have a specific regulation to allow the combination of DPS and framework agreements.

A use case of how DPS and framework agreements from Italy:

#### Case: Framework Agreements and DPS in Italy

In the 2020 Financial Act (Law n. 160 27/12/2019) has been introduced a specific provision (Art. 1, c. 586) to allow Contracting Authorities to award Framework Agreements through a procedure carried out within a DPS.

This innovative regulatory statement could be particularly useful for the Italian CPBs (Consign and the regional ones) in order to ensure timeliness and continuity in the offering of centralized FAs for CAs.

From a suppliers' side perspective, the higher speed related to the standardization and digitalization of the DPS, should allow CPBs to run centralized FAs more frequently, reducing the volumes of each FA in order to make the procedures accessible to a larger number of EOs and to smaller ones. This approach could be effectively introduced in market segments characterized by an intense offering evolution and a large number of EOs such as the ICT industry.

#### 11.11 Can a DPS be combined with eAuction?

There are rules that clarify that electronic auction may be held on the reopening of competition among the parties to a framework agreement and on the opening for competition of contracts to be awarded under the DPS.<sup>16</sup>

#### 11.12 Can DPS be combined with innovation partnerships?

DPS cannot be combined with innovation partnerships, as any kind of negotiation is not allowed, which is an essential part of innovation partnerships.

Furthermore, the purpose of the Innovation partnerships is for the development of an innovative product, service or works and the subsequent purchase of it while DPS is for products, services or works generally available on the market. The purpose of the two are in other words the opposite.

#### 11.13 Should a contracting authority request supplementing documents as a proof of (non)existence of exclusion grounds and fulfilment of selection criteria before qualifying a tenderer?

No, at the time of submission of request to participate CAs shall accept the ESPD, consisting an updated self-declaration as preliminary evidence in replacement of certificates issued by public authorities or third parties confirming that the economic operator fulfils the conditions according to conditions in Article 59 (a-c) in the Public Procurement Directives.

Before awarding contracts, the CA shall require the tenderer to submit up-to-date supporting documents according to the rules of means of proof.<sup>17</sup>

However, the CA may also at any moment during the procedure require the tenderer to submit all or parts of the supporting documents where this is necessary to ensure the proper conduct of the procedure.<sup>18</sup>

The rules that stipulate that only a self-declaration (an ESPD) needs to be submitted and not all evidences at the time of qualifying EOs can also be interpreted when reading the recital 65 in the procurement directive, where it says that "the examination of those requests to participate should normally be performed within a maximum of 10 working

<sup>16</sup> Public Procurement Directive Article 35 (2)

<sup>17</sup> Public Procurement Directive Article 59 (4)

<sup>18</sup> Public Procurement Directive Article 59 (4) and Recital (65)



days, given that the evaluation of the selection criteria will take place on the basis of the simplified requirements for documentation that are set out in this directive”.<sup>19</sup>

### 11.14 How much may award criteria set out in a contract notice be modified in awarding contracts under DPS?

The Public Procurement Directive states that the contract shall be awarded to the tenderer that submitted the best tender on the basis of the award criteria set out in the contract notice for the DPS. Those criteria may, where appropriate, be formulated more precisely in the invitation to tender.<sup>20</sup>

According to the Public Procurement Directive the CA shall specify, in the procurement documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender, except where this is identified on the basis of price alone.<sup>21</sup>

The Directive also allows to express those weightings by providing for a range with an appropriate maximum spread and where weighting is not possible for objective reasons, indicating the criteria in decreasing order of importance.

It could be derived that in the cases of indicating criteria in contract notice as maximum spread or order of importance, the criteria may be formulated more precisely in each specific procedure under DPS.

Award criteria in procedures under DPS could also be specified with procurement object specific information in case the general division and description of award criteria published in the contract notice establishing the DPS are not changed.

Changing the award criteria set out in the contract notice altogether cannot be accepted when awarding contracts under DPS.

### 11.15 Are negotiations for awarding contracts under DPS allowed?

According to the Public Procurement Directive, CAs shall, in order to procure under a DPS, follow the rules of the restricted procedure.<sup>22</sup> As negotiations are not allowed in restricted procedures, negotiations are not allowed in DPSs.

Moreover, according to the Public Procurement Directive,<sup>23</sup> the DPS shall be operated as a completely electronic process which means that no oral communication through the entire tendering process is allowed between the CA and the EO.

The answer is therefore no, negotiations under a DPS are not allowed.

### 11.16 May selection criteria set out in a contract notice be changed within the duration of DPS?

As in a restricted procedure the selection criteria should not be changed within the duration of DPS. Setting up additional selection criteria when awarding contracts under DPS opposite to reopening of competition under framework agreements is also not allowed.

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<sup>19</sup> When a DPS is first set up it can however be such a large number of requests for participation that the contracting authorities need more time before to examine the request. Public Procurement Directive Recital (65)

<sup>20</sup> Public Procurement Directive Article 34 (6)

<sup>21</sup> Public Procurement Directive Article 67 (5)

<sup>22</sup> Public Procurement Directive Article 34 (2)

<sup>23</sup> Public Procurement Directive Article 34 (1)

### **11.17 Do EOs have to provide tenders for the whole DPS or just for specific lots or categories within lots, if they are established?**

If a CA divides the DPS into specific lots and establishes specific exclusion grounds and selection criteria for different lots, EOs can qualify for only a specific lot in the qualification phase. CAs should therefore ensure that the DPS is established in a way that a distinction is made in a sense of which EO is admitted/qualified for which lot and make sure that the invitation for a specific procurement is sent only to those EOs that have been qualified to the corresponding lot.

Nevertheless, if the lot is further divided into categories the CA invites EOs to submit tenders for this specific category, all the EOs that have been qualified for that lot, can participate for a specific lot or category within that lot.

A category can be goods, services or works. These can be further broken down or defined as product categories etc.

### **11.18 Do all participants which already are included in the DPS have to be informed of the decision to include a new candidate in the DPS?**

No, there is no such obligation in the Directive. The DPS is an open system and this is known to all participants. Nevertheless, in Slovenia there is a Regulation to provide this information. In other countries like Estonia and Hungary this is done to ensure transparency.

### **11.19 Should the list of EOs, qualified in the DPS, be publicly available?**

There are no EU rules regulating the publication of the list of EOs. Nevertheless, there are national regulations in some Member States, which mandate the publication of any decision, which includes the publication of qualified EOs, like in Slovenia. In Estonia, for example, it is mandatory to disclose the list of candidates after opening the requests to participate.

### **11.20 Do all tenderers have to be informed about the decision to award a contract in a specific procurement?**

Yes, all tenderers shall be informed of the decision to award a contract. This results from Article 55 (1) of the Public Procurement Directive and Article 2a (2) of Directive 89/665/EEC (as amended by Directive 2007/66/EU and Directive 2014/23/EU, b). In addition, the concerned communication shall be accompanied by a summary of the relevant reasons as set out in Article 55 (2) of the Public Procurement Directive, as stated in Article 2a (2) of Directive 89/665/EEC (as amended by Directive 2007/66/EU and Directive 2014/23/EU).

Finally, it results from Article 50 (3) of the Public Procurement Directive that a contract award notice shall be sent by the CA within 30 days after the award of each contract based on a DPS. CAs may, however, group such notices on a quarterly basis (to be sent then within 30 days of the end of each quarter).

### **11.21 What are the rules regarding standstill periods in DPS?**

Directive 89/665/EEC (as amended by Directive 2007/66/EU and Directive 2014/23/EU) applies to all contracts covered by the Public Procurement Directive, including DPS, Article 1(1) 3rd subparagraph of the Directive 89/665/EEC (as amended by Directive 2007/66/EU and Directive 2014/23/EU).

As regards the standstill period, please note that, on the basis of Article 2b of Directive 89/655/EEC (as amended by Directive 2007/66/EU and Directive 2014/23/EU) member states may provide a derogation from the standstill periods referred to in Article 2a (2) Directive 89/665/EEC (as amended by Directive 2007/66/EU and Directive 2014/23/EU) for specific contracts based on a DPS as provided for in Article 34 of the Public

Procurement Directive. If this derogation is invoked certain remedy measures must be ensured in the national legislation. Even when this derogation has been invoked the obligation for CAs to inform each tenderer and candidate concerned of the award decisions remains.

This means that it is up to the member states in their national legislation to determine whether or not a standstill period is to be followed after each contract award in a DPS. If this has been left unregulated a standstill period will in effect be default.

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## 12 Do's and Don'ts

In this chapter there are some recommendations about what to do or not do or to consider when a DPS is used.

### 12.1 Do's

- As DPS is still a new procedure type, competence building in setting up DPS for the CAs and their procurement officers and for the EOs for participating would be helpful.
- Use available electronic tools that support the DPS process sufficiently and effectively.
- A DPS is targeted for off the shelf products, services and works.
- Preliminary market consultation is recommended when preparing a new DPS.
- Consider pros and cons of the DPS and framework agreements. Make sure that DPS is the right choice when planning a procurement.
- When preparing a DPS make a plan for the work; there might be many suppliers that want to be qualified. If 15 days does not seem sufficient for the first qualification phase, indicate the number of days needed already in the contract notice.
- Consider dividing the DPS into lots and categories under it, to make it easier for SMEs to participate.
- Make sure to estimate the value for the entire duration of the DPS. As a DPS can last for multiple years, it is safe to presume that the DPS in most cases will fall under the EU rules and therefore should be published on TED.
- Providing information about qualified EOs in a DPS is good practice and done already in a number of Member States.
- With the advent of possibilities for automatic processing of Specific procurements and notification publication, transparency can be increased with regular publication of award-notices rather than quarterly publication.

### 12.2 Don'ts

- Negotiations and/or any oral communication between the CA and the EO are not allowed in a DPS.
- CAs cannot open their DPS to other CAs after publishing the notice. Only CPBs can add other CAs at a later stage if this was indicated in the notice.
- Specific procurements can only be done after establishing the DPS.
- eCatalogues in DPS cannot be used as a marketplace. The eCatalogues are part of a tender in a specific procurement and are visible for the CAs as parts of contracts.
- Overspecification of the qualification criteria does not motivate tenderers to apply for DPS.
- Award and selection criteria cannot be modified in a DPS.
- It is not advisable to combine DPSs with eAuctions, because DPS is already an effective process. Combining it with eAuctions would make the process longer and less effective. This means that the process costs would increase on both sides considerably. As well, DPS is a way to make public procurement more accessible to SMEs, applying eAuction would likely make it less attractive. Another reason might be that different systems are being used for DPS and eAuctions which would lower usability.
- Each Specific procurement will have its process costs. These process costs increase with the number of EOs bidding. The use of a DPS for individual low value purchases, especially in an area with many participants, like for office supply, is not recommended.

## 13 Final remarks

Based on experiences from usage of DPS today we give some final remarks below in order to further promote the usage of DPS.

### 13.1 DPS is an effective tool and many benefits are identified

The experiences so far have shown that DPS is an effective process for procurement of goods, services and works where the requirements are easy to define and where electronic communication is sufficient.

Usage of DPS promotes product development in a way that is difficult to reach when using frameworks agreements.

Since DPS is not a closed market for new suppliers, it gives opportunities for more suppliers to continuously participate and be awarded contracts.

Specific procurements can be launched often and can be divided into smaller lots that makes it more attractive and possible for also SMEs to submit tenders and deliver. There is no obligation to deliver during a long period that can be up to four years. This can be a disadvantage for CAs so they have to consider which of the procedures, DPS or framework agreement would be the best option when planning a procurement.

The timeframe to make specific procurements is very short compared with other procurements procedures.

The DPS, when supported by an easy-to-use platform, can be an effective means to facilitate the adoption of digital procurement processes by CAs and EOs.

### 13.2 Further guidance important

Experiences from MS so far shows both benefits of the usage of DPS but also that there are questions about the new way of working. Further information and promotion of DPS seem to be important. It is both for the CAs that shall set up and run DPS but also EOs need to be guided in the use of the new tool. It needs more concrete guidance at national level to reach the stakeholders.

### 13.3 Further development for a complete electronic process

To reap all benefits from DPS, the process should be completely electronic. Today this is solved in different ways. A DPS can be performed with market solutions and solutions developed by administrations. Within those solutions it might be possible to run the process more or less fully electronic, but the solutions are not interoperable. The experience shows that for example if a CPB is setting up a DPS, the specific procurements that CAs perform are often operated in different systems for specific procurements. Therefore, to make DPS more efficient, it would be necessary to move towards harmonized and structured data and to use a common network for the exchange of data. The application of the "once only principle" (i.e., reuse of data from the qualification phase) could be an important driver for SMEs to participate in DPS as it would lower the burden on their side to qualify, over and over again. Further development of structured data in standards and usage of common infrastructure would facilitate the use of DPSs.

### 13.4 Usage of eCatalogues is efficient

eCatalogues are also a useful tool for an efficient DPS process. It is in use and can already be recommended. The example given in the section of eCatalogue shows that for specific goods, services or works there might already be standards that could be used.

### 13.5 Promotion of DPS by Member States

This guideline shows that DPS can be more important in the future. It was slightly used during the COVID-19 crisis. It has the potential to be used more if a DPS is set up and that specific procurement can be run very fast. Therefore, the Member States should help their CAs to make more use of this tool and promote usage for the procurement of products, services and works for emergency situations.

### 13.6 Final word

Already today there are benefits found by the users, so do not hesitate to start with DPS. There are several Member States that have already started using DPS and who have made good experiences by using this procurement tool. Please find in the Annex several examples of DPS adoption.

To raise awareness and build knowledge is crucial in order to get more DPSs in place. Even if it is a rather new procurement tool, the benefits are already clear.

The EXEP subgroup who worked on this guideline hopes that you find this document useful.

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## 14 Annex - Use cases from Member States

### 14.1 Country case Estonia

#### 14.1.1 Overview

The DPS regulation has been adopted in the Procurement Act as stated in the Directive.

Central Procurement Register in Estonia <https://riigihanked.riik.ee> provides a full-process technical solution for carrying out DPSs since May 2019. In our system we strongly follow the once-only principle. We offer eNotification, an integrated ESPD solution 2.0 extended, eSubmission, checking exclusion grounds and selection criteria based on automatic queries into national information systems, decision documents based on checks carried out by the CA, automatic eEvaluation and eAward services. We follow the structured approach and try to encourage CAs and EOs, to primarily work with data rather than documents prepared in their computer and uploaded in the system.

As of November 2020, there are 19 DPSs established in Estonia. DPSs have been started in several fields, e.g., spare parts, software development, land surveying, cars and solar panels. The number of interested applicants in the DPS procedures varies currently between 10 and 20, but the numbers are likely to increase in time. The average time period to establish a DPS is 36 months.

#### 14.1.2 Pros and cons

CAs find the tool useful for carrying out repetitive purchases within a period of time. The technical solution provided by the state helps CAs understand the process and guides them through the process. As the tool is relatively new, it takes time until the advantages are realized and the DPS is a more frequent choice besides framework agreements. So far only more innovative CAs have taken interest.

It takes time to understand all the legal and technical aspects of DPS. Currently there is a user guide available. User trainings are on their way and hopefully the awareness and the number of established DPSs will increase in the future.

#### 14.1.3 Lessons learned & capturing practical questions arising from the implementation

First, it is important to understand the process as such. Close collaboration between lawyers and technical people is required.

Secondly, working out a user-friendly technical solution is a challenge. As the DPS should run as a completely electronic process, we have automated all stages and followed the once-only principle as much as possible.

Thirdly, guidelines, user training and consulting service are highly appreciated.

### 14.2 Country case – Hungary

Electronic public procurement has been mandatory since 1 April 2018 in Hungary. From 2018, Dynamic Purchasing Systems (DPS) gradually appeared on the Hungarian public procurement market. Typical subject matters of the current 14 Hungarian DPSs are food, health and IT products. The majority of contracting authorities using DPS are not central purchasing bodies. Based on market feedback, the regulation sought to follow demand amending the regulation in 2019. At present, the development of the electronic public procurement system is constantly being negotiated between the stakeholders in order to improve the system and the regulatory background.

#### 14.2.1 Case of University of Szeged – DPS the engine of innovation

Short description Including:

- Start date and end date 2018.12.- now

- Product category - Chemicals, reagents, consumables, Est. value: 6 MEUR
- Reason to choose a DPS – The DPS replaced a framework agreement (FA) procedure including 2800 Lots. Many of the products procured (chemicals, reagents, consumables) can only be delivered by one supplier. One of the most important reasons to start a DPS was that a number of products had to be procured that did not exist at the time of the launch of the procedure, therefore the possibility of later expansion related to the specification of procurement objects is essential in the case of innovative activities and research.
- Number of bidders participating - 70
- Numbers of buyers participating – 1 (including the departments of the University of Szeged)
- Based on previous FA? - yes

#### 14.2.2 Pros and cons

##### Buyer vs supplier

##### Pros

- Improvement in the quality of procurement process for the innovative good/ service
- Reduction of the costs of the procurement process
- Improvement in the satisfaction of end user needs
- Simplification of the procurement process in which the good/service has been included
- Increase of transparency of the process in which the good/service has been included
- Reduction of supplier risk in the procurement process
- Improvement in the competences of actors involved in the procurement process
- Support to small-medium enterprises
- Stimulation of innovation

##### Cons

- Conflict of interest of stakeholders
- Uncertain implementation of Public Procurement Directives
- Price volatility
- The excluded bidder may return
- Pre-qualification is not serious, practically anyone can get in

##### Comparison with other tools or procedures (DPS vs. FA)

- The role of the flexible environment is greater in the case of DPS than in the FA

#### 14.2.3 Lessons learned & capturing practical questions arising from the implementation

- Part of the preparation was the education of market players, raising awareness of the possibilities of DPS.
- The role of the human aspect is greater (engagement of influencers, leaders, open-minded public procurement experts) in the case of DPS
- Question: How to involve framework agreement into DPS?

### 14.3 Country Case: Italy

In Italy DPSs have been adopted mainly by CPBs, as a tool to simplify the acquisition of goods and services either through aggregated contracts and as a “platform” provided to CAs to run their own tenders.

Italy transposed the EU DPS legal discipline with no substantial integrations, with article 55 of the new Public Procurement Code (published in 2016) that also stated that Consip, on behalf of the Ministry of Economy and Finance, could establish a National DPS system, available for all the Italian CAs. Most DPSs established in Italy so far are related to



Healthcare products and services, given the high level of standardization and large number of purchases that characterize this specific market.

During the first 9 months of 2019 in Italy more than 500 tenders have been launched on DPSs for an aggregated notice value of around 4 billion euro.

#### 14.3.1 The Italian National DPS service

Since 2012, in the general framework of the “Program for the rationalization of public spending of the P.A.” run by the Ministry of Economy and Finance through Consip S.p.A and aimed to support Public Administrations in managing their procurement processes providing innovative and eProcurement solutions, a National DPS service is available for all the Italian CAs to procure goods and services.

The duration and operating rules for each specific product/service domain are defined in the call for competition notices and related documentation published by Consip, who is responsible for platform development and management and EOs qualification.

EOs can submit at any time a request for qualification to the established DPSs of their interest and Public Administrations can design and launch their Specific procurements using the functionalities provided by the platform; on the supplier side, all the EOs qualified for the specific product/service category are automatically invited and use the platforms functionalities to prepare and submit their tenders.

Currently the operational DPSs enable CAs to perform digital tenders in 22 different product/service areas: healthcare (Pharmaceuticals, Electro medical equipment, home oxygen therapy, linen washing and rental, etc.), ICT (hardware, software and professional services), building management (maintenance services, cleaning services), energy production from renewable sources plant and services, food products, catering services, food vouchers, insurance services, postal and delivery services, furniture.

During the first 9 months of 2019 more than 400 tenders have been launched by more than 100 CAs for an overall notice value of 3 billion euro. Up to date, more than 7.500 EOs have been qualified.

#### 14.3.2 Pros and cons

The experience conducted so far has shown that DPS is a powerful way to standardize and simplify the way CAs and EOs meet in the public procurement market. From the CPB perspective, DPS, together with Framework Contracts, Framework Agreements and the Electronic Marketplace (for below the threshold purchases) contributes to offer to CAs a comprehensive range of e-Procurement tools, in order to meet their different “buying needs”. The main issues related to DPS’s adoption are the relevant amount of information, education and support needed by the users when they approach for the first time to this procedure and the significant effort required to develop and manage the ICT platform.

#### 14.3.3 Lessons learned & capturing practical questions arising from the implementation

A key challenge to face when the DPS adoption evolves to a more “mature” phase, is the need to balance the will of the CAs for a very flexible DPS that provides the largest set of tender customization functions with the high level of standardization required to reach as much operational simplification and automation as possible.

### 14.4 Country case: Netherlands

#### 14.4.1 Case of the city of Rotterdam

With 650,00 inhabitants, Rotterdam is the second largest city of the Netherlands. Contrary to Amsterdam the purchasing function is fully centralized. Total budget is approx. 3 billion euro, 14.000 civil servants are employed. The total purchasing volume of about 1,3 billion euro is contracted by a procurement department with 100 FTE. All working from home since March 2020. The Rotterdam Procurement department is glad to

contribute to sharing practical knowledge on their DPS experience, a procedure that Rotterdam can no longer do without.

#### 14.4.2 Background and as-is situation; Rotterdam as early adopter

Immediately after the implementation of the EU Procurement Directive in 2016, the city of Rotterdam proceeded to set up a DPS for requesting external contractors. The first DPS was operational at the beginning of 2017. Rotterdam is now working with the 2nd version of the DPS. Annually, approximately 85 million euros contracted the DPS. In 2019, more than 700 contractors submitted a request to enter the DPS. In 2020, an additional 700 contractors entered the DPS to support the corona pandemic workload.

#### 14.4.3 eTendering platform and Robotics

Rotterdam currently has several DPS procedures operational and the purchasers determine per request whether the DPS procedure can be used. The registration process is automated through an eProcurement platform and a Robot (RPA) to make it even more efficient. It is currently being investigated whether a DPS procedure can be used to pre-select all healthcare contractors on the basis of the minimum requirements, in order to quickly run mini-tenders within the pool of qualified contractors. The estimated annual value of such DPS would be more than € 700 million per year.

#### 14.4.4 Compelling reasons to start a DPS

The shortened lead times has been the primary reason to start the DPS. Rotterdam also created a more transparent and competitive market, leading to better rates and a more diverse contractor base.

Other decisive reasons:

- Continuously adding new participants during the term of a contract.
- Quickly tapping into rapidly evolving markets during the term of the contract.
- Risk being sold out (globally) avoiding the lead-times of standard procedures (e.g., Corona related Medical Articles).

#### 14.4.5 Advantages

- Abundant competition
- Short tendering lead-times
- Better rates and quality of offers
- Simple requests comparable to mini-competition from with a framework agreement with several contracting parties
- New parties can be admitted during the course of a DPS procedure
- Easy and fast communication with the market
- No highly trained buyers needed to submit inquiries

#### 14.4.6 Considerations

- Many procedures compared to a framework agreement with 1 party; more labour intensive in both the admission and the requests
- Continuous capacity utilization of purchasers and applicants
- In case of low volume, the registration documents may expire, and participants may need to resubmit. (We now overcome this with a contractor portal)
- In case of contractor scarcity, contractors do not want to compete
- In case of better rates outside the DPS, participants are gone
- Verification interviews instead of job interview
- Little one-on-one communication with the participants, at times leads to being less sensitive to the market trends

- There is a discussion whether a DPS is allowed on the local Dutch Procurement law (AW 2012)

#### 14.4.7 Lessons learned

The DPS is continuously under development in its practical application and breadth of use. With a new DPS procedure, a business case must always be made to decide whether it makes sense to start up a DPS. Once started, the organization is committed to it for years with all the work that goes with it. We must ensure sufficient capacity before launching a DPS.

The DPS method is a perfect procedure for various services and deliveries.

Admission and control are strict and that requires a lot of communication.

In case of a scarcity, request a market-based rate range to keep interest from scarce contractors.

Because the DPS is 100% digitally, we can forget to talk to our main (bulk) contractors. For external contractors, we now actively plan discussions with bulk contractors with whom we do a lot of business. From this you will receive valuable information you can use to improve the DPS application and mini-bids.

Some suppliers are digital illiterates and do not understand the operation of eProcurement platform. There is a task for such platforms to create clarity and have an excellent and responsive service!

In many markets, (such as for external contractors) it is desirable to request the burden of proof in the admission to a DPS procedure in advance, (such as normally in the restricted procedure). This has a number of effects:

- Only serious contractors sign up, in the old DPS we had 65% inactive participants, while that has now been reversed, we have 65% active participants.
- Because the burden of proof has already been checked, you no longer need to check this within the request gaining significant time.
- Because the burden of proof is requested in advance, the supplier only needs to submit it once.
- If you also have the burden of proof kept up to date by a supplier portal, you are always assured of reliable suppliers.

### 14.5 Country case: Norway

#### 14.5.1 Background and as-is situation

Norway has not a national tendering system, although there is a centralized publication system – Doffin – as a mandatory sender of eNotices to TED for all competitions above EU-threshold. The Norwegian Agency for Public and Financial Management (DFØ) has confidence in the market players to deliver proven tendering systems with functionality according to legal requirements and user needs. The contracting authorities are free to select their own tendering system among the available systems. Today there are 5-7 available tendering systems in the Norwegian market, delivered by 3-4 suppliers. Merccell ASA (three systems) and Visma are the main players.

The combination of CPB and DPS gives interoperability challenges. Proven interoperability between the various tendering systems is required. The CPB will qualify the EOs, but the specific procurement will be run in the CAs' systems. Focusing on developing standards and a common eDelivery network – transport infrastructure, will be a main task in order to achieve a complete electronic process.

In terms of prevalence, DPS has so far only been used to a limited extent in Norway. The total number of competitions published in Norway 2019 (above threshold – TED) was 10.313 and the number of published DPS in 2019 was 78 and published by 39 Contracting Authorities. In the table below you will find the development of the use of DPS for the last three years.

	# of CAs	# of DPS	Average # of DPS pr CA	Max one CA
2017	8	26	3,25	13
2018	20	47	2,35	20
2019	39	78	2	7

**Table 1:** Use of DPS in Norway 2017-2019

The number of EOs participating in the specific procurement varies, ranging from a few to 77 on a single DPS.

The two Norwegian CAs with extended usage of DPS are Ruter AS, a transport company owned by the municipality of Oslo, and Bergen municipality. In the table below you will find figures that shows the use of DPS from the two CAs:

Organisation	No of active DPS	No of qualified suppliers total all DPS	No of DPS goods	No of suppliers pr. DPS goods interval	No of DPS services	No of suppliers pr DPS services interval	No of bids pr. competition	
							- average	- max
Ruter AS	12	Ca. 160	2	7-13	10	25-77	Average 7	Max - 30
Bergen municipality	10	Ca. 80	6	5-12	4	5-13	Average 3	Max - 10

**Table 2:** Usage of DPS - two CAs 2017-2019

In table 2 the number of active DPSs show for the two main product categories - goods and services, the number of suppliers qualified per specific procurement and the number of tenders received per specific procurement.

Norway has today no national DPS running from the national CPB, but there is an ongoing project running for a DPS covering national needs for venues for conferences and seminars.

#### 14.5.2 Reason to choose a DPS

A national survey, based on interviews, the users of DPS address the following effects:

Better prices - increased competition in the market

- achieved price reduction by replacing/supplementing framework agreements with DPS
- easy access to a wider supplier market
- access to the public sector market for suppliers, especially for SMEs and local suppliers without capacity to qualify for a huge tender
- engaging and activation more start-ups

Reduce process cost - more efficient processes and reduced transaction costs/time spent by CAs and EOs – compared to framework agreements

#### 14.5.3 The users' experience

The main feedback from the users is that the DPS is effective for specific lots and markets.

- Easier to establish a DPS competition than to establish a framework agreement
- Feels hard to start with DPS - change of habits, due to:
  - Lack of competence in DPS-procedure and limited guidance
  - The process is not completely electronic
  - Time-consuming internal - due to heavy involvement - legal discussions
- Various approaches and strategies, regarding:
  - Establish only a DPS,
  - Establish a DPS on the top of a framework agreement

- Market knowledge is important
- Areas evaluated:
  - Supplier markets
    - SMEs are satisfied with the use of DPS, compared to framework agreements
    - Local market players are engaged
    - In a DPS, all EOs can qualify and offer goods, services or works requested in the specific procurement - no fear to be locked out for four years
    - Flexibility for participation
    - Quality and user satisfaction
      - Tailormade request from DPS - support increased quality
      - Rethink the way editing tender documents - set-up of the award criteria in a completely electronic process
    - Time and productivity
      - Not enough experience too comment
    - Price level – tenders
      - Goods – price level reduced due to increased number of suppliers/tenders
      - Services – not clear indications for the same results as goods

## 14.6 Country case: Slovenia

From the 1st of April 2018 the electronic public procurement is mandatory. Therefore, the Ministry of Public Administration developed a publicly accessible and free of charge eSolution system. At the same time, three additional payable e-solution systems were developed by consultant companies, commonly providing customers with the whole package of services (preparation of documentation, publishing, consulting contracting authorities through the whole procedure...).

Dynamic Purchasing System (DPS) is being integrated in our national system at the moment. The integration is being developed in cooperation with the IT-solutions provider that has already been selected. After a promising start, the development has now slowed down due to the current COVID-19 situation. Therefore, the only systems providing the DPS are currently the two systems by private consulting companies. Also, the integration of solutions for opening of competition in Framework Agreements is being developed in our national system.

With the national DPS system still under development, the Ministry of Public Administration is currently in the role of an observer of other DPS systems, which enables optimisations and future competitiveness of the developing DPS system.

In Slovenia currently eight DPS are in progress. Types of contracting authorities using DPS comprise of municipalities, medical centers and The Association of Health Institutions of Slovenia and contracting entities in the infrastructure field. DPS is most commonly used for the subject-matters: medical equipment, medical waste-related services, construction, design, geodetic and safety services and works. As already mentioned, all DPS-based procedures in Slovenia are run by private consultant companies. Seven out of eight DPSs currently running in Slovenia are in the first phase and one is in the phase of call-offs by the contracting authority.

### 14.6.1 The case study

- Contracting authority: The Association of Health Institutions of Slovenia (comprising 35 health institutions)
- Title: Medical waste-related services
- Short description:
  - Start date and end date: 7th of March 2019, and the due date in 2025
  - Reason to choose a DPS: The reason behind the use of DPS by the contracting authority was the significant increase of product prices within framework agreement.

- Number of bidders participating: Currently 9 bidders are participating for all lots
- Numbers of buyers participating: comprising 35 health institutions
- The contract is divided into 12 lots
- Based on previous FA: Yes
- Pros and cons
  - Buyer vs supplier
  - Pros:
    - competition: the market is not closed for suppliers
    - lower prices
    - transparency of tenders
    - new challenge
    - in some geographical areas it can be more important for certain suppliers to apply
  - Cons:
    - lack of experience
    - absence of tenders
    - a completely electronic process – everything new
    - suppliers not want to participate
- Lessons learned & capturing practical questions arising from the implementation
  - After adoption and recognition of benefits of the DPS by contracting authorities and suppliers, DPS will provide possibilities for comparable tenders and competitive prices

## 14.7 Country case: Sweden

The interest of DPS has been increasing in Sweden, even if framework agreements are still dominating. Some statistics show that the first DPS were established in 2017. There is no national solution for e-procurement and DPS in Sweden. The CAs procure their procurement systems; there are approx. 4 solutions that are used.

DPS are run by either CPBs or by CAs. In the situation where the CPB sets up the DPS, the CPB is responsible for the initial qualification of EOs, but thereafter the invitations to tender and the following processes are administered by the CAs. In some instances, the CPB can also administer the tender process and even award the contract on behalf of the CAs. There are Swedish DPS for goods, services and works.

In order to give concrete examples of the usage of DPS we have chosen to present examples of one CPB and one CA, the municipality of Kristianstad.

### 14.7.1 SKL Kommentus Inköpscentral/CPB

SKL Kommentus Inköpscentral (SKI) is a CPB included in a company group owned by the Swedish Association of Local Authorities and Regions (SALAR). SKL Kommentus provides the public sector (municipalities, regions and the companies they own) with contracts (mainly framework agreements) as well as purchasing and HR services.

The first DPS that SKI set up was for purchasing wood pellets. It was initiated in March 2017 with a period of validity of 4 years. Wood pellets were chosen for the “pilot” because pellets are considered simple and standardised products. In this DPS, SKI provides CAs with templates to fill out, thereby giving the CAs the possibility to make smaller adjustments or to make specific requests in step 2. Although, SKI is responsible for the process of both awarding contracts, on behalf of the CAs, in the system and for handling any subsequent appeals.

The application process in the Wood pellets system takes around ten minutes per EO, time spent primarily checking the ESPD. The average time SKI spends on each specific procurement is around two hours, and it takes, in total, 15 days on average, from publication until a contract is signed.



The DPS on wood pellets was a success. After the first 10 months, the total value of the contracts awarded through the DPS surpassed the total value of the previous four yearlong framework agreement.

SKI's second DPS was for purchasing electrical energy. This also a simple and standardised "product" that is available on a large market. Because of the difficulty to evaluate tenders on electrical energy in the procurement of a national framework agreement, SKI found that a DPS would better facilitate competition. The process in this system is the same as in wood pellets, however it has proven more time-consuming – on average, each specific procurement would require four hours. Initially there were a lot of questions from CAs, in spite of well worked-through templates and guidance documents.

Since the establishment of the first DPS, SKI has started three more DPSs on solar panels, artificial grass and charging points for electrical cars and hybrids. Solar panels are divided into three different DPS, one for products, one for works and one for consultants. The object of the procurement in this case is technologically complicated, so SKI has provided the CAs with templates and guides (incl. an evaluation model), however they are not mandatory to use them. This is the first DPS where SKI does not award contracts (but performs all the administrative tasks). SKI also sets up the DPS in the procurement platform and qualifies suppliers. The CAs are then responsible for awarding contracts and to handle their own appeals. The Solar panel-systems were published in March 2020 and as of yet there have not been any specific procurements resulting in a contract.

Artificial grass is similar to Solar panels, as the process is the same for these two DPS. The Artificial grass-system is instead divided into several categories and covers both works and services (new constructions, reconstructions and maintenance).

The DPS for charging points for electrical cars and hybrids has not yet been implemented.

#### 14.7.1.1 Experiences

A general perception is that DPS are suitable for markets with a large number of suppliers, but maybe there is no incentive for suppliers to respond to specific procurements, if there are small chances of winning the contract. However, this could be avoided by using templates and other supporting material to make it easy for EOs to participate and to send in tenders.

There is a flexibility to DPS, but it is not clear how much the CAs can adjust the specific requirements in step 2 or how much actually needs to be set out by the CPB in step 1. If terms are set out in step 1, it is clear that they need to be adhered to (for example award criteria).

Performing coordinated follow ups in a DPS is difficult in comparison to frameworks agreements, since there are different terms and conditions in each specific contract awarded through the DPS. SKI and the suppliers have no direct contractual obligations towards each other. The CPB therefore does not have a direct relationship with each supplier in DPS in the same way as it does in a framework agreement. In SKI's more recent DPS, templates are not mandatory to use (e.g., environmental requirements). SKI has a right to perform follow ups of the contracts, but no mandatory terms are set out by the CPB, in the way it would be set up in a framework agreement.

There are still unanswered questions about what it means to have an entirely electronic process. Is it possible to have online meetings as interviews for evaluation of consultants, as one example?

It is difficult for the CPB to know to which extent the DPS is used, when the CAs are completely responsible for the specific procurements. There is no technical or administrative procedure in place to report participation.

A few other general challenges with DPS that have been identified by SKI are:

- There are difficulties with the completely electronic process within markets where the suppliers are not familiar with procurement
- Administration can take a lot of time per specific procurement

- Swedish platforms are not well developed for CPBs
- So far not many (if any) court cases are settled, and the new legislation has not yet been “put to the test”

#### 14.7.1.2 Pros and cons

DPS provide several benefits for a CPB:

- EOs can join continuously and there are no limitations on the number of participants – which creates opportunities for SMEs.
- There is no requirement on the CPB to identify the participating CAs in the notice.
- There is possibility for adaptation of requirements for each individual CA.
- A DPS is less vulnerable for the CPB/CAs if one EO is excluded or drops out.
- DPS facilitates/promotes product development in a way that is difficult to accomplish in framework agreements.
- DPS can prove to be an efficient purchasing process if the procurement platforms are well-developed and can be used to the fullest.

#### 14.7.1.3 Challenges and difficulties

There are also challenges and difficulties of DPS for a CPB:

- They can require a lot of resources for the CPB if there are many applications or tenders.
- There are no procurement platforms that can fully match CPB expectations. Manual evaluation and use of e.g., Excel-files requires a lot of resources compared to having a fully electronic platform for all steps of the DPS.
- DPS might decrease the incentive for some EOs to participate if the competition is too high and there are small chances of being awarded contracts
- The possibility for a CPB to coordinate follow-ups becomes limited because of the disparity of the requirements from different CAs

#### 14.7.2 Municipality of Kristianstad

DPS are also established and used by contracting authorities and an example is the municipality Kristianstad, with 85.000 inhabitants and 8.000 employees.

The municipality started with DPS 2017 by publishing it for social workers and the 2018 for technical consultants.

The DPS for technical consultants was important to establish since the municipality had a limited number of experts in their framework agreement and the experts often changed employers. It was uncertain if experts would be the same under the four-year framework agreement. The DPS has resulted in 2 qualified suppliers, but there have been no invitations to tender.

The DPS for social workers has been very successful. Due to the refugee crisis, there was an increased need for social workers. There was a framework agreement with three suppliers, but the ordinary staff needed more social workers/consultants. The increased costs had been 871 %. To establish a DPS was seen as an alternative for an agile market and to get more competition.

The result of the DPS was 57 requests for participation (51 unique suppliers). 14 were qualified when the DPS was established and there are 35 qualified suppliers today. There have been 18 invitations to tender and the result is 29 consultants. It is 6,4 offers per request, which is very good compared with the framework agreement. The time between request and start of work for the consultants is 1 month.

##### 14.7.2.1 Experiences

- It is important to secure the quality of the tender invitation
- It is also important to decide on the requirements, where to be placed
- The management of start-ups is important.
- It is a pro-competitive process



- It needs to be agile with the market.

#### 14.7.2.2 Factors for success

- To have well balanced requirements for qualification; to think long term and also cater for both small and large suppliers
- The planning of the administration is important.
- A good procurement system is needed and to evaluate automatically.

