



European
Commission



Dynamic Purchasing Systems

Use guidelines



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1 Executive summary

1.1 Introduction

In 2017, the Commission published a Communication *Making Public Procurement work in and for Europe*. The Communication addressed six strategic priorities and the underlying areas of public procurement that must be improved in order to help transform public procurement into a powerful instrument. Among these priorities is boosting the digital transformation of procurement. Dynamic purchasing systems (DPS) support all six strategic priorities.

The goal of these guidelines, based on DPS use experience in Member States, is to describe the legal framework and provide some practical information on how a DPS can be set up and used. The guidelines also address some questions that may arise.

Below is a brief description of the various sections in this document.

1.2 The legal framework of DPS

Section 4 presents the two stages of the DPS. The first is to qualify economic operators (EOs) and the second is for the specific procurements. The DPS is to be operated as a completely electronic process. It is open, during the whole period of validity of the DPS, to new EOs that meet the selection criteria. Therefore, it is a good instrument to attract EOs. A DPS may be divided into categories of products, works or services and the contracting authority (CA) is to specify the applicable selection criteria for each category. These criteria may, when appropriate, be formulated more precisely in the invitation to tender.

1.3 A graphical view of the functioning of DPS

To describe further how the DPS would function in practice and to help understand the process, Section 5 provides a graphical view of how the DPS works.

1.4 A completely electronic process

The DPS shall be operated as a completely electronic process. A reason is that a DPS is designed to be used for standardised goods, services or works. As specific procedures are recurring, it makes a lot of sense to digitise the process completely. From an EO's request to become qualified and participate, to the evaluation of tenders and until payments, this process can reap many benefits. Section 6 describes how a completely electronic DPS process can be done with both eDelivery and standardised information.

1.5 Usage of the electronic catalogue

The Directive explicitly describes how to make use of eCatalogues also in a DPS. Section 7 gives information on how this can be done.

1.6 Benefits and challenges of a DPS

Section 8 presents several 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 there are also challenges that a CA needs to consider when using a DPS.

1.7 The uptake of DPS based on TED data

As presented in Section 9, Tenders Electronic Daily (TED) data provides some information on DPS use. While there are some early adopters, generally the data shows that uptake is still very low and plays no significant role as compared with framework agreements. Nevertheless, the numbers are rising.

1.8 The DPS questionnaire and results

In summer 2020, a questionnaire was sent to Member States regarding the usage of DPS. The questions and results are presented in Section 10.

1.9 Questions and answers

Section 11 describes several topics that could be raised by CAs considering the use of DPS.

1.10 Dos and Don'ts

Section 12 gives some suggestions of what a CA should and should not do when using DPS.

1.11 Final remarks

Section 13 gives some final remarks on these guidelines.

1.12 Annex

The Annex presents how some Member States are using DPS in their country.

2 Glossary

Please find below a list of terms and their definitions that are used often in these guidelines.

- **Admitted participants:** We refer to the word “admitted participants”, but also call them “qualified” suppliers.
- **Call for competition:** In the Directives this word is used, but in practical life “call for tender” very often is used.
- **Categories:** For the purpose of awarding contracts under a DPS, contracting authorities are to 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 (CPB):** 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. We use CA instead of buyer in this document.
- **Directives:** This document often refers to the Directives. Usually, it is referred to the Public Procurement Directive 2014/24/EU but, since the rules regarding DPS often are similar, also to 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 articles in both Directives. If not specifically stated, a reference to the Directives is meant as a reference to the Directives as a whole, i.e. both recitals and articles.
- **DPS:** Dynamic Purchasing System.
- **Economic operator (EO):** 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 market¹. In this document, the term is used with its abbreviation EO. We use EO instead of supplier in this document.
- **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 of 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.
- **European Single Procurement Document (ESPD):** The ESPD is a self-declaration form used in public procurement procedures. Only the winner of the tender needs to provide the actual documents.
- **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:** Mini-tender refers to the reopening of a competition under a framework agreement.
- **Public Procurement Directive:** Throughout the guidelines, the term ‘Public Procurement Directive’ is, unless otherwise specifically stated, used as a reference to

¹ Public Procurement Directive Article 2 and Utilities Directive Article 2.

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement.

- **Qualified suppliers:** All candidates satisfying the selection criteria are to be admitted to the system (DPS). Since the Directives refer to the restricted procedures, we call the suppliers that are submitted to the system “qualified”.
 - **Remedies:** The European Public Procurement Remedies Directives has minimum standards for review procedures. A company has access to rapid redress procedures with administrative or review courts in all EU countries.
 - **Specific procurement:** Specific procurement refers to the opening of a competition under a DPS. It is when the CA invites all admitted participants to submit a tender.
 - **Tender:** In the Public Procurement Directive, the word tender is used, but in practical life, very often the synonyms bid or offer are used. In this document, we mainly use the word ‘tender’.
 - **Tenders Electronic Daily (TED):** TED is the online version of the “Supplement to the Official Journal” of the EU, dedicated to European public procurement. TED publishes calls for tenders and contract award notices.
 - **Utilities Directive:** Throughout this document, 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 work in and for Europe is a 2017 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions². The Communication addresses the following six strategic priorities and the areas of public procurement that must 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; and
6. Cooperating to procure together.

DPS has been an electronic tool under the procurement directives since 2004. In the 2014 Directives, the rules were adjusted in order to better facilitate the use of DPS and to enable CAs to take full advantage of the possibilities provided by this instrument. The Directives clarify 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 the Utilities Directive, both of 2014. The procedure is suitable for dealing with new EOs, new products and volatile prices, and can also be used to bridge periods of crisis in a country's economy.

The use of DPS will contribute to all six priorities, and will provide a direct boost for at least three of them. DPS will increase competition. As it is an open system, it will improve access to procurement, and SMEs will find it easier to participate in competitive procedures. In addition, the DPS will, as a fully electronic process, serve to boost the digital transformation of public procurement, both for CAs and EOs. Standardised documents and procedures will shorten the time needed for procuring goods, services and works. The DPS will also be a strategic tool for CAs to minimise the time for procuring off-the-shelf products. To cater for the strategic issues, such as improving cross-border markets 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 works³. However, framework agreements mean that the relevant market will be closed for all other suppliers that are not part of the FA. Potential suppliers cannot participate in a competitive procedure until they are admitted under the subsequent procurement, which can be up to four years later, or even longer in certain cases.

Using DPS is one way of overcoming this barrier since new suppliers can join at any time. This purchasing technique allows 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 that 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 these guidelines is to provide practical information based on experience from various Member States when using DPS, and also to address and clarify some questions that may arise. This document will present the benefits and challenges of using DPS in various Member States. Challenges are often related to different interpretations of the text of the directives and each Member State's approach to complying with the regulations. This can include their targeted approach for dealing with questions like 'What

² COM(2017) 0572, Final 3.10.2017.

³ The process can also be, in part, an electronic process; in the call-off process to order electronically, based on a price list/catalogue and then to receive an invoice that can be matched to the order.

is meant by a “fully electronic process”?, and ‘How do we implement the “once-only principle”?’

After a legal introduction, the guidelines 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 Member States are presented. A section is dedicated to the uptake of DPS, based on statistics from TED and a survey.

4 The DPS legal framework

The Public Procurement Directive and the Utilities Directive lay down rules regarding the use of DPS⁴. In this section, we give a brief description of these rules⁵.

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

The DPS system shall be operated as a completely electronic process⁶, 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 also as exclusion criteria. The ESPD, including both selection and exclusion criteria, is 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 based on 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 shall be performed.

Where the CA has 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 based on the award criteria set out in the DPS contract notice. These criteria may, where appropriate, be formulated more precisely in the invitation to tender.

4.2 Procedure for the DPS and time limits

The Directives set down that a DPS shall be operated in the form of a restricted procedure. All candidates satisfying the selection criteria shall be admitted to the system, but the number of candidates admitted to the system is not to 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, and 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; and
- 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. Once the invitation to tender for the first specific procurement under the DPS has been sent, no further time limits for receipt of requests to participate shall apply.

⁴ Public Procurement Directive Article 34 and Utilities Directive Article 52.

⁵ In the use cases below, national regulations may also be applicable.

⁶ Public Procurement Directive Article 34 and Article 22(1), (3), (5) and (6).

The examination of 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 (see Section 11.7), 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 shall be indicated by the CA in the contract notice. The CA can indicate 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. Within 10 working days following receipt, CAs shall finalise their assessment of such requests in accordance with the selection criteria. 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.

At the earliest possible opportunity, CAs shall inform the EO concerned of whether it has been admitted to the DPS.

4.3 Self-declaration/ESPD

At the time of submission of interest to request participation in the DPS, the CAs shall accept the ESPD as preliminary evidence as a substitute for certificates etc. The ESPD rules also apply for DPS.

This also means that CAs may, at any time during the validity period of the DPS, require admitted participants to submit a renewed and updated self-declaration⁷, within five working days from the date on which that request is transmitted⁸.

Before awarding contracts, CAs shall require the tenderer, to which it has decided to award the contract, to submit up-to-date supporting documents such as certificates, statements and other means of proof regarding exclusion grounds. If CAs have free direct access to national databases, 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 also be freely accessed by the CAs.

The rules under the Directives regarding self-declarations⁹ apply throughout the entire DPS validity period.

4.4 Submitting tenders

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 to submit a tender all participants admitted for the category corresponding to the specific procurement concerned.

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

⁷ Public Procurement Directive Article 59(1) and Utilities Directive Article 52(7).

⁸ Public Procurement Directive Article 34(7) and Utilities Directive Article 52 (7).

⁹ Public Procurement Directive Article 34 referring to Article 59(4) to (6) and Utilities Directive Article 52.

4.5 DPS validity period

CAs shall indicate the DPS validity period in the contract notice. They shall provide information in notices about any change in the validity period, using the standard forms provided for under the Directives. Where the validity period is changed without terminating the DPS, the form used initially for the contract notice shall be used. Where the system is terminated, a contract award notice, as per Article 50, shall be used.

5 A graphical view of the functioning of a DPS

Functioning of a Dynamic Purchasing System Overview

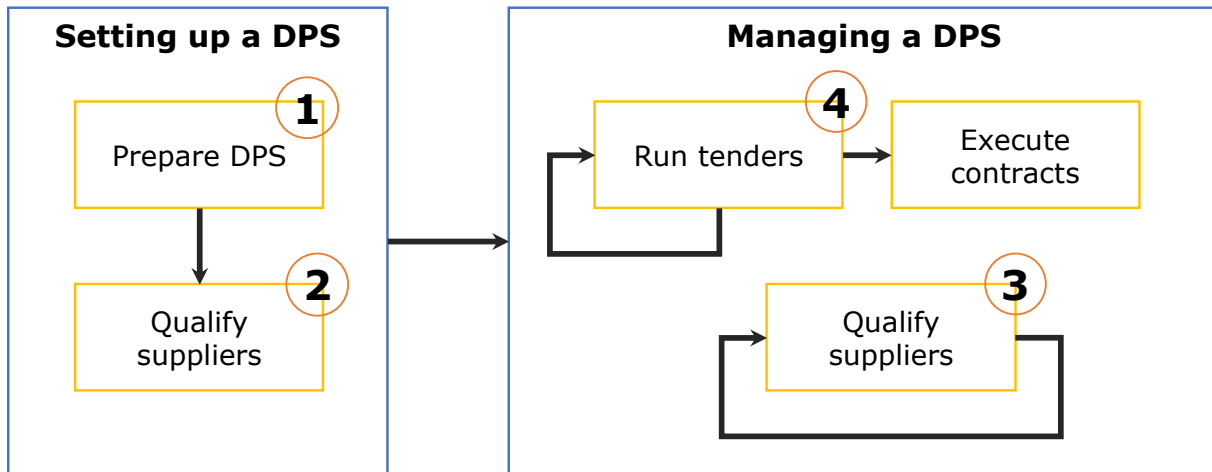


Figure 1: The process for setting up and managing a DPS

Functioning of a Dynamic Purchasing System Detailed view

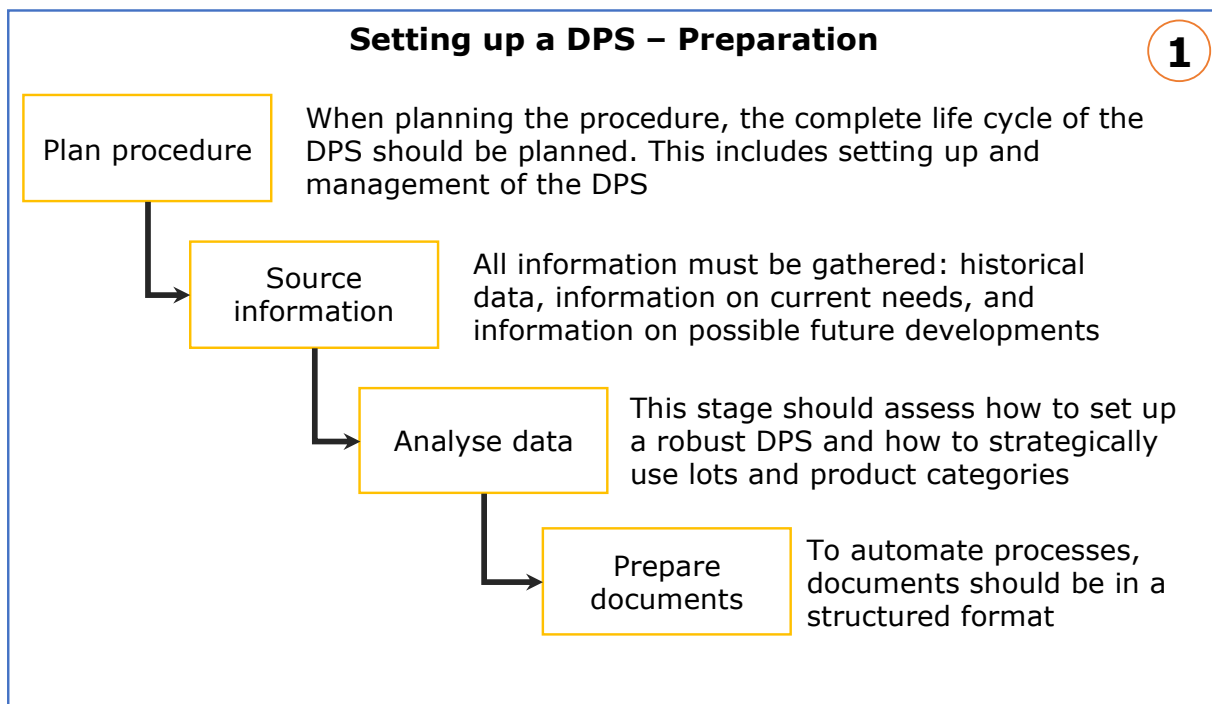


Figure 2: A possible workflow to prepare a DPS

Functioning of a Dynamic Purchasing System Detailed view

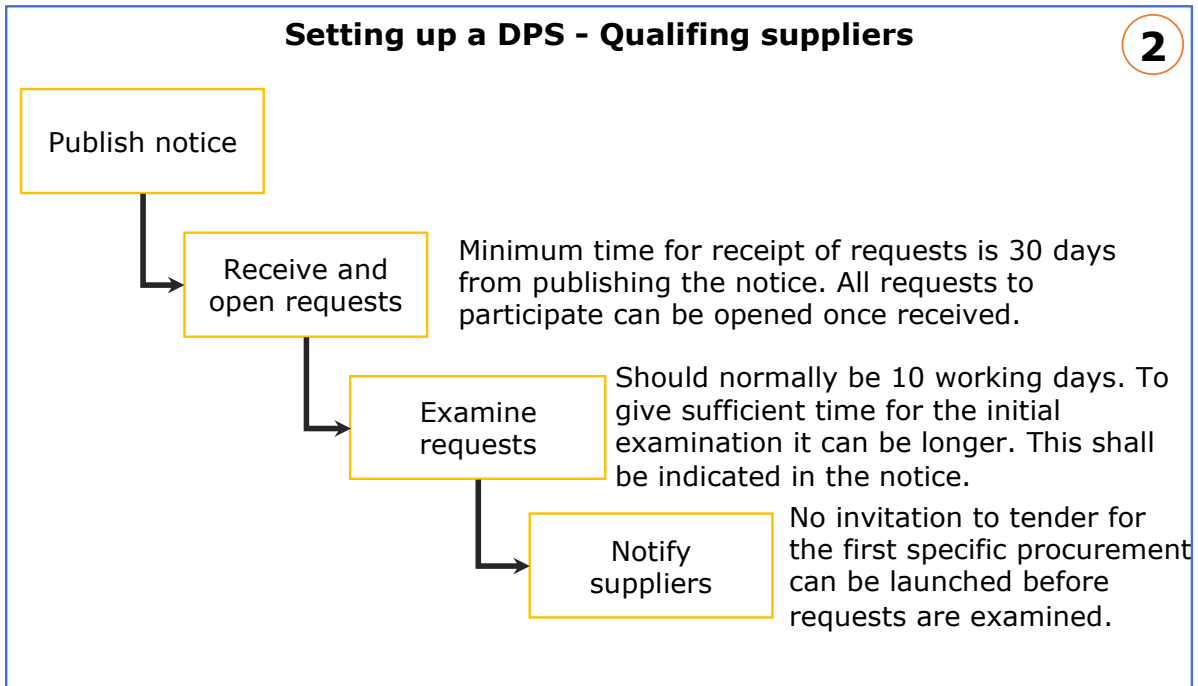


Figure 3: Qualification process during the set-up of a DPS

Dynamic Purchasing System Detailed view

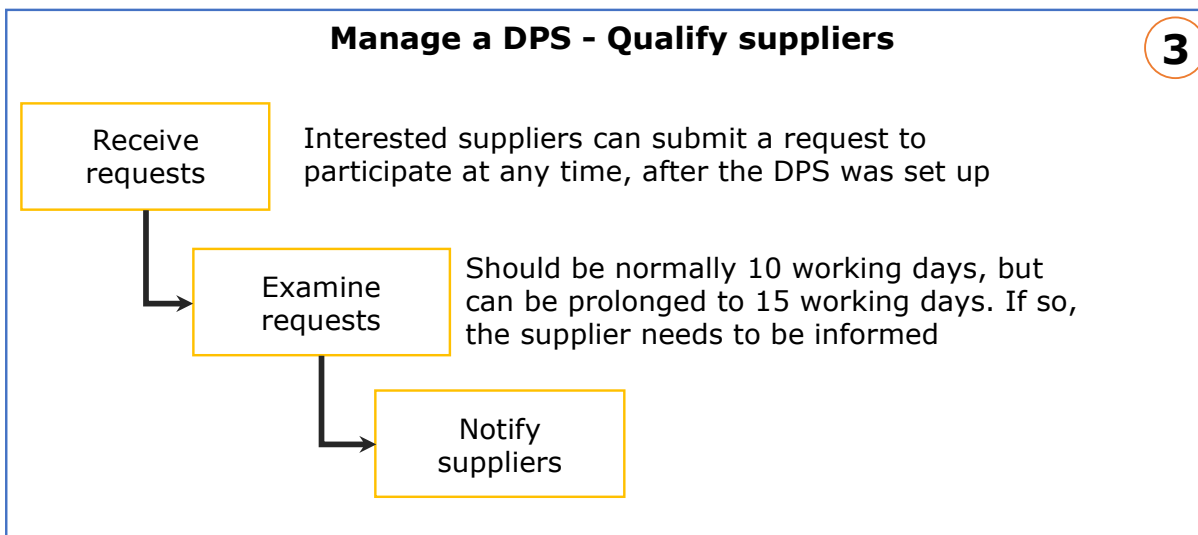


Figure 4: Qualification process during the management of a DPS

Functioning of a Dynamic Purchasing System Detailed view

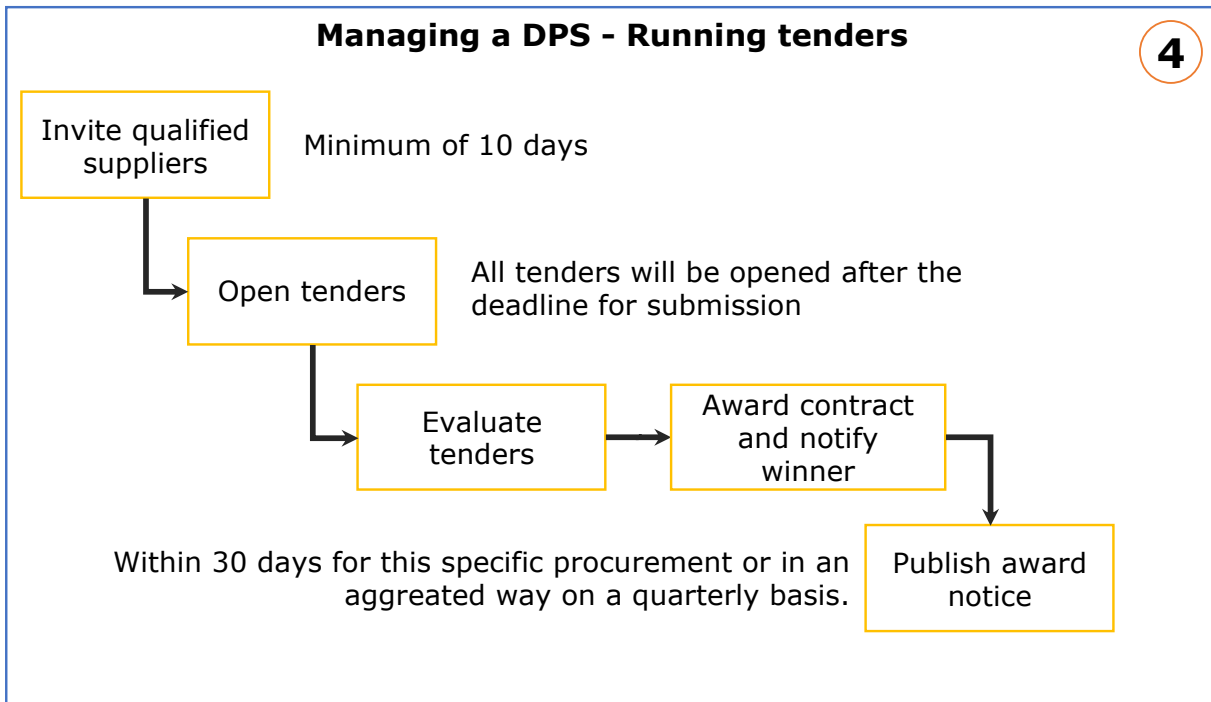


Figure 5: Running tenders using a DPS

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

Functioning of a Dynamic Purchasing System Process and time frames

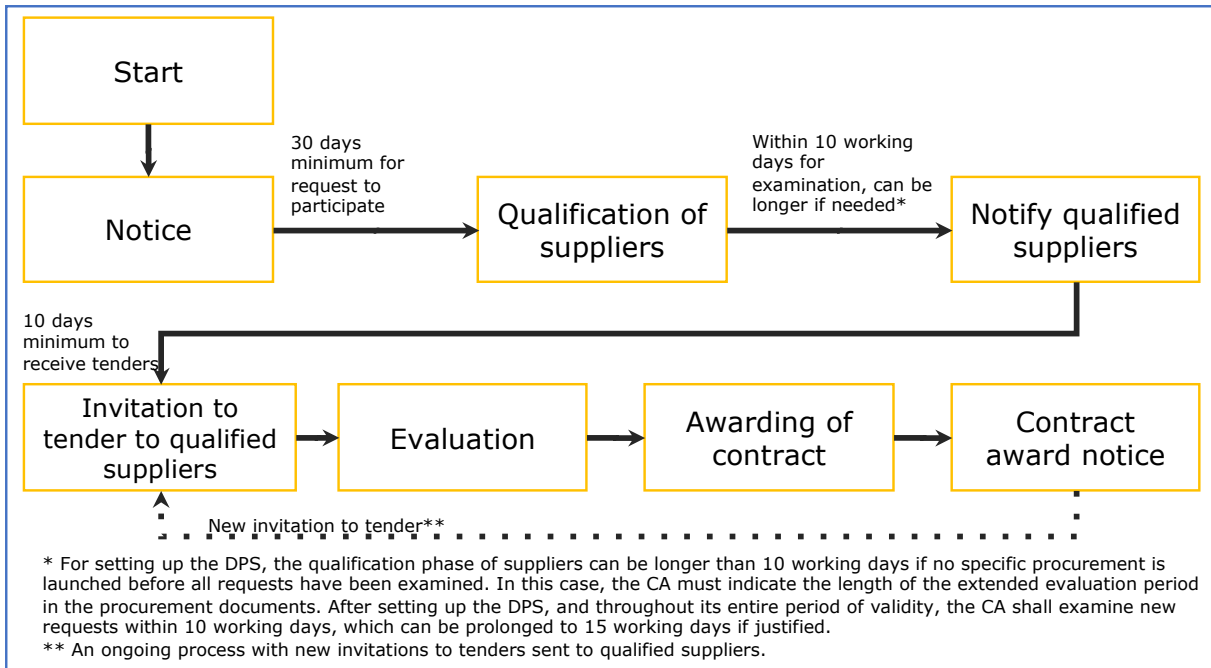


Figure 6: DPS process and time frames

6 A completely electronic process

The reference 'a completely electronic process' is not clearly defined in the Directives, but recital 52 provides 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 communication by 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'*¹⁰. It also states that Member States 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 Member States. Also, the use of electronic means in the procurement processes and general maturity of electronic systems differ between Member States. The figures in section 5 show the process and time frames for the whole tender 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 efficiently if the processes are completely digital and with structured documents. An efficient qualification process requires interoperability between the tendering systems.

Basically, the transmission of documents is delivered electronically by most tendering systems. Several of today's tendering systems are providing their own way of transmitting documents between the CA and the EO. In some procurement systems/platforms, it is also possible to create and simplify tender documents in the tender system itself, using online forms instead of purely exchanging text documents. The systems handle the various deadlines and time frames in the various procurement processes. Today's tendering tools are mainly document-based, transmitting documents and often tailor-made 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 with the once-only principle and reuse of data. Document-based systems do not cater for interoperability and exchange of data between systems or across borders. Complying with the once-only principle and the interoperability requirements will not be possible in a document-based system, whether in individual systems, between tendering systems, or from tendering systems to other relevant systems. This can include eOrdering and ERP systems with the ability to transfer catalogues from pre- to post-award and follow up contracts financially.

A digital and completely electronic process, using both eDelivery and standardised documents, is a new way of presenting 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 standardised and digital tender documents in a DPS will contribute to executing a completely digital evaluation of the received tenders. In addition, the use of various building blocks, such as the ESPD data model, the use of functionalities to retrieve the actual evidence (in Norway, for example, this is done through a method 'get evidence') and methods to exchange standardised catalogues will result in efficient processing of the DPS procedure. For 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

¹⁰ Public Procurement Directive, recital 52.

this way, the DPS will be a tool for increasing competition, attracting SMEs to compete and boosting the use of digital tools.

The prerequisite will be a standardised transmission infrastructure for the distribution of standardised tender documents in structured formats. In Figure 7, the digital DPS process is designed based on the documents needed for the CA and EO during a DPS. It is important to underline that there will be a need for competence building in running a DPS and in the digital means for preparing tender documents for a digital evaluation of all received tenders against the predefined evaluation criteria.

Completely electronic process

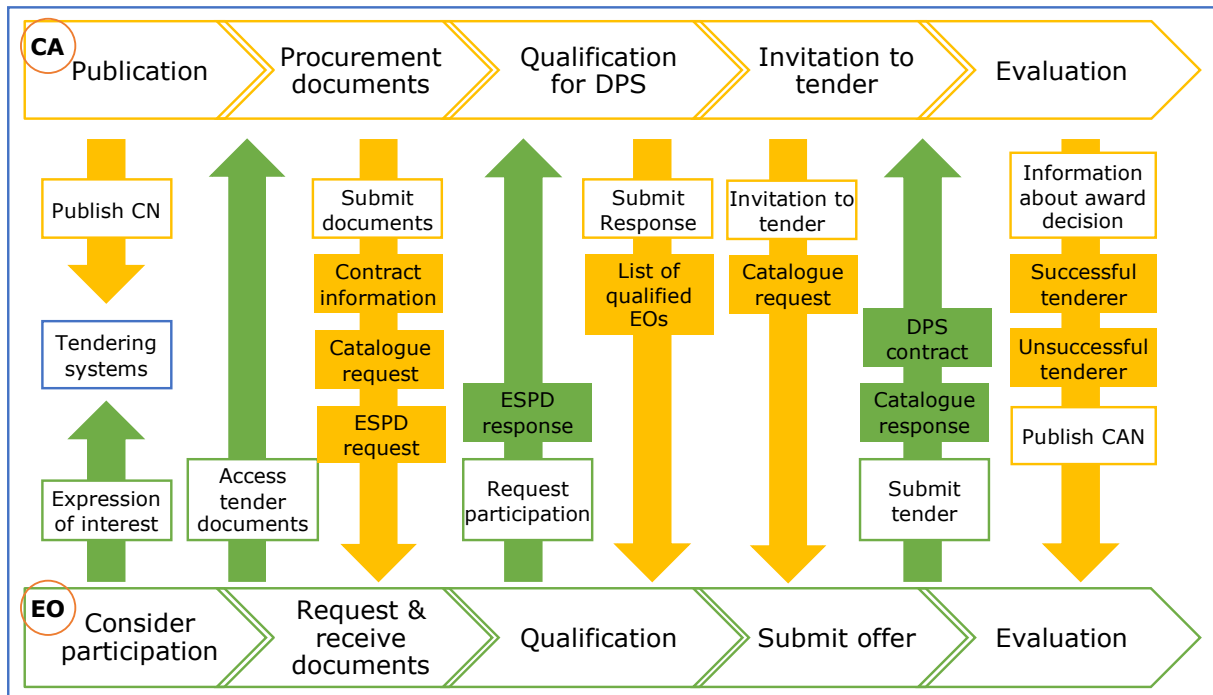


Figure 7: The DPS process, based on standardised documents and transmission infrastructure

7 The use 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 standardised tendering process.

Requesting tenders in a highly structured and standardised format facilitates the evaluation process, and automatic evaluation accelerates the process for managing the tenders. Even if structured formats do not suit all procurement procedures, DPS is a procedure that involves products and services that are easy to describe and specify, and electronic catalogues are specifically suitable.

Moreover, the use of electronic catalogues is particularly suitable in DPS and framework agreements where the number of buyers and suppliers involved is large and where users may not have detailed knowledge of the characteristics of the full range of products and services. In these conditions, eCatalogue formats and management rules can be a transfer of knowledge from the entity setting up a DPS to the EOs. If the entity setting up a DPS is a CPB, then it is even a transfer of knowledge to CAs.

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 to each call for competition. The eCatalogue is the template that the CA provides, and the supplier fills it in.
2. eCatalogues are established by suppliers to participate in the DPS and are updated to respond to each call for competition¹¹.

7.1 eCatalogues to respond to each specific competitive procedure

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 catalogue¹².

The CA setting up the DPS may provide an eCatalogue template to be used by CAs and suppliers to manage in a standardised way all 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 provide specifications and prices in a standard manner, suitable for a structured analysis and an automatic evaluation. To this extent, the eCatalogue template should be designed to check the elements that are relevant as award criteria to apply scoring rules and algorithms (multiple choice, rank order scaling, rating scale, semantic differential scale...).

Suppliers will use the eCatalogue templates to fill in and submit their tenders.

This operating model is very flexible and efficient, since it allows CAs to customise their calls for competitive procedures using standardised templates defined in the DPS procurement documents and provided by the platform used to run the DPS.

Several countries provide examples of the use of eCatalogues in framework agreements. In Sweden, Italy, Finland and Hungary, for example, it is used very often. It is an efficient process where CAs define the products that will be procured and it is 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 buy from them. Today, it is often in Excel format but there are ongoing standardisation efforts that will result in eCatalogues in structured formats. Use of eCatalogues in DPS have the

¹¹ Public Procurement Directive Article 36(4) and (5) and Utilities Directive Article 54(4) and (5).

¹² Public Procurement Directive Article 36(6) and the Utilities Directive Article 54(6).

same potential for benefits as in framework agreements. It is efficient for both suppliers and CAs, and it is transparent.

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 standardised pharmaceutical products description based on four technical characteristics:

1. the Anatomical Therapeutic Chemical (ATC) classification system, managed by the World Health Organization;
2. the active ingredient;
3. the dosage form; and
4. the dose.

An electronic catalogue (Excel format) with the list of pharmaceutical products (which today includes 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 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 quantity	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 enable CAs and EOs to perform three phases of the tendering process in the DPS:

1. Collecting the needs of pharmaceutical: the CA uses the eCatalogue to gather in a standardised format the products needed by the operational units that will use the products (e.g. hospital units).
2. Required products definition: the CA uses the eCatalogue template to describe the product requisites and to request all participating EOs to state specifications and prices in the standardised 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.

8 Benefits and challenges of a DPS

The Directives refer to several incentives for using DPS. This purchasing technique allows CAs to have a particularly broad range of tenders and hence to ensure optimum use of public funds through broad competition¹³. Compared with 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, in case of a framework agreement. It increases the possibilities for SMEs to participate since a DPS can be divided in lots and there is also a possibility to submit a tender but no obligation to do so. Therefore, the DPS gives freedom to SMEs to decide whether they want to participate in a specific procurement procedure. They can also decide if they want to participate only for a specific lot.

Below is a list of incentives for the use of DPS for both CAs and suppliers. Since DPS can also be used by CPBs, which is the case in several countries, specific topics are described 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 in response to calls for tender for specific procurements because a DPS is open for new suppliers during the validity period.
- DPS can be divided into smaller lots or categories with specific procurements done within these categories. A series of smaller individual purchases (compared with the whole of the DPS or FA covering the same area) will presumably make it more attractive to SMEs to participate.
- A DPS is open for new suppliers during the validity of the DPS. This gives the possibility to have more suppliers than in 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 in a DPS.
- 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 those involved in the procurement process.
- The time frame to make specific procurements is short compared with other procedure types. Having only qualified suppliers participating in them can be seen as a simplification of the procurement process.
- The use of a DPS can scale better than other procedure types. A DPS that is used often can attract more EOs to participate. This means that, for example, if municipalities are using specific procurements, this could attract local suppliers.
- Using an efficient procurement tool such as DPS and which is made fully electronic and with possibilities to have some parts in an automated way (checking databases) can reduce costs in the process.
- Possibility to formulate precisely the technical requirements for each specific procurement procedure as well as the award criteria. The precision has to be in accordance with the initial procurement documents of the DPS. As an example, for one specific procurement the CA could decide to rate the performance of a notebook higher, while for another one the weight could be more important.
- No limitation on the validity period of a DPS.
- There can be a reduced risk by having suppliers ready to submit tenders compared with a framework agreement where there is only one supplier and that supplier cannot deliver due to insolvency/bankruptcy, difficulties to deliver the requested volume etc.

¹³ Public Procurement Directive recital 63 and Utilities Directive recital 73.

- eCatalogues can be used and can make the process more efficient.
- To have suppliers that are interested in this digital tool can also have the effect that suppliers are interested in using digital tools also for other efficient 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 and potential negative consequences for contracting authorities

- There is no obligation for a qualified supplier to submit a tender in the second phase of specific procurements. So even if there are many qualified suppliers, it does not necessarily mean that there will be any tenders. Therefore, for critical goods or services, it can be safer with a contract or framework agreement that 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 incentive to respond to specific procurements if there are small chances of winning the contract.
- Time-consuming. There can be many suppliers who want to become qualified. This can be the case especially if the requirements in the DPS are not specified in detail (for example, IT equipment without a more precise description of the requirements). An efficient and more automated way of qualifying suppliers is important.
- No certainty on the final price compared with what is possible in a framework agreement with one supplier or with several suppliers. Prices can vary compared with 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 taken into consideration if it is goods that are to be delivered frequently and the supplier has established well-functioning logistics to deliver the goods. When eOrdering is introduced, some EOs that deliver goods require a well implemented process for receipt of the goods and the matching of invoices to the orders and despatch advices.
- Lack of experience can be an obstacle and having knowledge is important. CAs and EOs need to be supported when using the new tool.
- Fear that EOs in the market do not have enough knowledge or interest to participate in DPS. This means that CAs have to be ready to prepare the market for DPS as a process that also has advantages for suppliers.

8.3 Incentives and benefits for suppliers

- A more open market. This gives possibilities to deliver continuously and not be dependent on winning a contract or a framework agreement, since these close 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, for example, specific products or geographical areas where it is more interesting for some suppliers to deliver than for others.
- The practice of dividing specific procurements into lots can be beneficial.
- There is no requirement for the supplier to participate in specific procurements, even if qualified.
- Even if not qualified at the first attempt, it is possible to reapply and become qualified later if the criteria are then fulfilled.
- An efficient process since it is fully electronic.
- eCatalogues can be used and this can be efficient for suppliers to fill in.
- Transparent procurement processes.

8.4 Challenges and potential negative consequences for suppliers

- Lacking experience in the use of DPS.
- Using DPS requires good support from the IT solution used, especially if there is a lack of experience.
- With a great number of suppliers and if criteria are not very precisely specified, there might be no incentive to respond in order to be qualified and then to submit tenders if there are 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 managed by the CPB, while in the second part, the conduct of specific procurements is also monitored. If the CPB also wants to 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 for the second part — in the case of using an eCatalogue, the quality of the catalogue management or just different procurement platforms/solutions — determines the success of the CPB.

From the CPB's perspective, use of both DPS and framework agreements can be more efficient tools to offer CAs a comprehensive range of eProcurement tools, to satisfy their different buying needs.

When a DPS is set up by a CPB to be used by a wide range of CAs, it can be designed and managed to standardise and simplify the way CAs and EOs meet in the public procurement market, taking advantage of the CPB's large procurement and operational capabilities.

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

To get the best from using DPS, CPBs must develop specific capacities to:

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

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

9 The uptake of DPS based on TED data

The following TED data shows the application of DPS under the Public Procurement Directive and the Utilities Directive. The data includes all contract notices from the two Directives up until April 2020. It is important to note 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 with all procedures and frameworks agreements

The table shows the comparison of all procedures, compared with framework agreements (FA) and DPS.

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

Comparing the number of DPS with those for FA, it is clear that DPS does not play as significant a role as FA, which accounts for roughly a quarter of all procedures. Nevertheless, while the overall number of procedures remained similar between 2019 and 2020, the number of DPS was rising significantly and the number of FAs decreasing slightly.

9.2 The Public Procurement Directive vs the Utilities Directives

The table shows the number of procedures between the two Directives.

Directive/Year	2016	2017	2018	2019	2020
2014/24/EU	61489	144243	170263	194110	198010
2014/25/EU	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
2014/24/EU	145	233	413	508	813
2014/25/EU	0	1	29	43	80

The Utilities Directive effectively started 1 year later than the Public Procurement Directive. In relation to this Directive, the proportion of DPS is the same as under the Utilities Directive.

9.3 How Member States are using DPS?

The table gives the number of DPS usages by Member State per year.

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

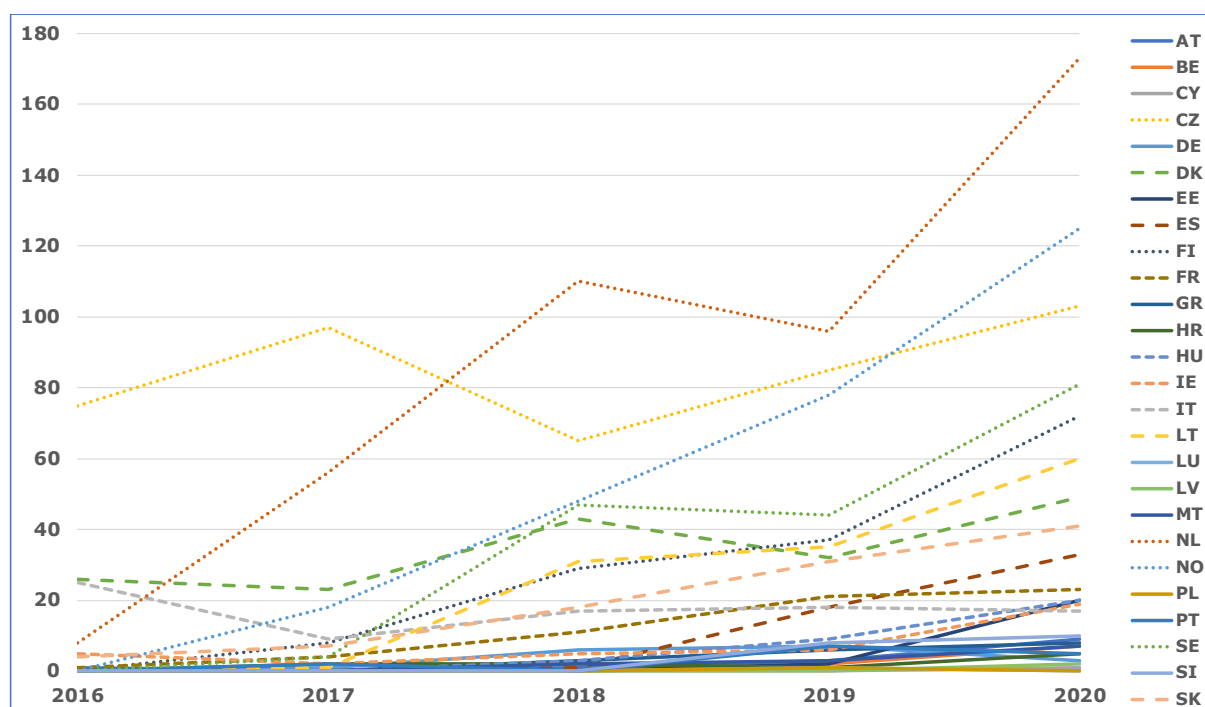


Figure 8: Set-up of DPS by country and per year

The early adopter was the Czech Republic, followed by the Netherlands, Finland and Norway. But the figures show very clearly that many countries are still not regularly using DPS. In total, 1643 DPS were set up 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 with their occurrences.

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

The vast majority of DPS procedures have only one lot. There have been two procedures with more than 100 lots (140 lots and 459 lots). The procedure with 459 lots concerned 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 by type compared with their occurrences. It does not distinguish between the Public Procurement Directive and the Utilities Directives.

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

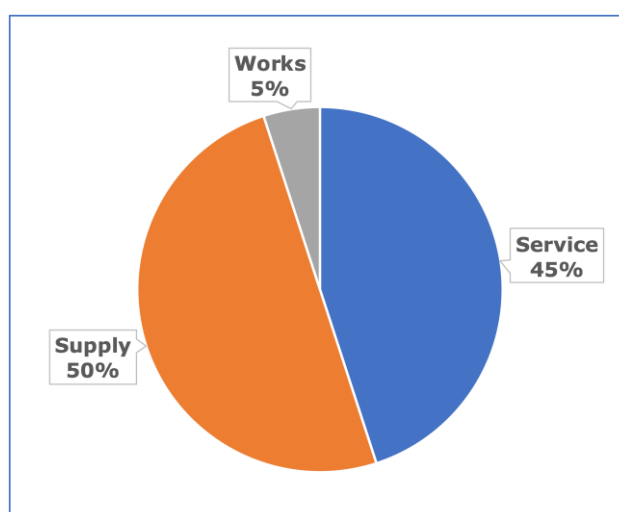


Figure 9: Set-up of DPS per type

50% of the DPS are for services. Only some 5% of procedures are of type works.

9.6 What is the duration of DPS?

The duration is given in years indicating the maximum period.

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

Most durations of the DPSs based on figures from TED show a maximum of 4 years, which is also the maximum number of years for FA. The second most frequent duration is

up to 10 years. There are also some durations given that are up to 100 years. Undefined means that for that entry provided in the notice, this could not be processed into months.

9.7 What CPV codes were used?

The following table covers the top 20 CPV codes. To have a better view, the CPV codes are presented in 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 equipment, 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 supplies and IT equipment are the top categories, followed by education and training services.

A question was raised whether CPV codes could be used for categorising 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 the use of lots is more emphasized but also more flexible.

9.8 How successful are DPS?

With a total number of 8.986 lots indicated in the contract notices, only 9.291 contract award notices were published. Unfortunately, the data set does not reveal if data was aggregated or not. Therefore, it is good to investigate 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 received only one tender. However, it was indicated by public buyers that, in a few cases, more than 100 tenders were received. Maybe the high number of tenders is a result of aggregating the information in contract award notices.

10 The DPS questionnaire and results

The purpose of the DPS questionnaire was to become familiar with the opinions of stakeholders and to share their experience with the public. The questionnaire was completed by 37 respondents from 19 countries (Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Malta, the Netherlands, Norway, Portugal, Slovakia, Slovenia and Sweden). The respondents were from ministries, CPBs, providers of electronic public procurement services and from contracting authorities and entities. Based on their answers, an overview is gained on the practice of using DPS in Member States.

Respondents mainly encounter DPS above the EU threshold, although its use is spreading below the EU threshold. In most Member States, the rules are the same both below and above the EU threshold, with legislators introducing fewer administrative obligations below the EU threshold. DPS is typically used by CAs, with more growth potential for the utilities sector and CPBs.

Most survey respondents have DPS guidelines to help market players apply DPS. Moreover, there is already remedies experience from courts 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 DPS validity period is typically less than 5 years, which may be related to the difficulty of estimating the value of public procurement for longer terms.

DPS is supported by a single central service provider or by several additional market service providers within a Member State. This is important because the relatively new model needs to be supported not only by a single government operator but also by as many market players as possible.

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 as to 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 it does provide 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 half of respondents (except for 'I don't know' answers) is that DPS cannot be supplemented by new lots, new product categories or products.

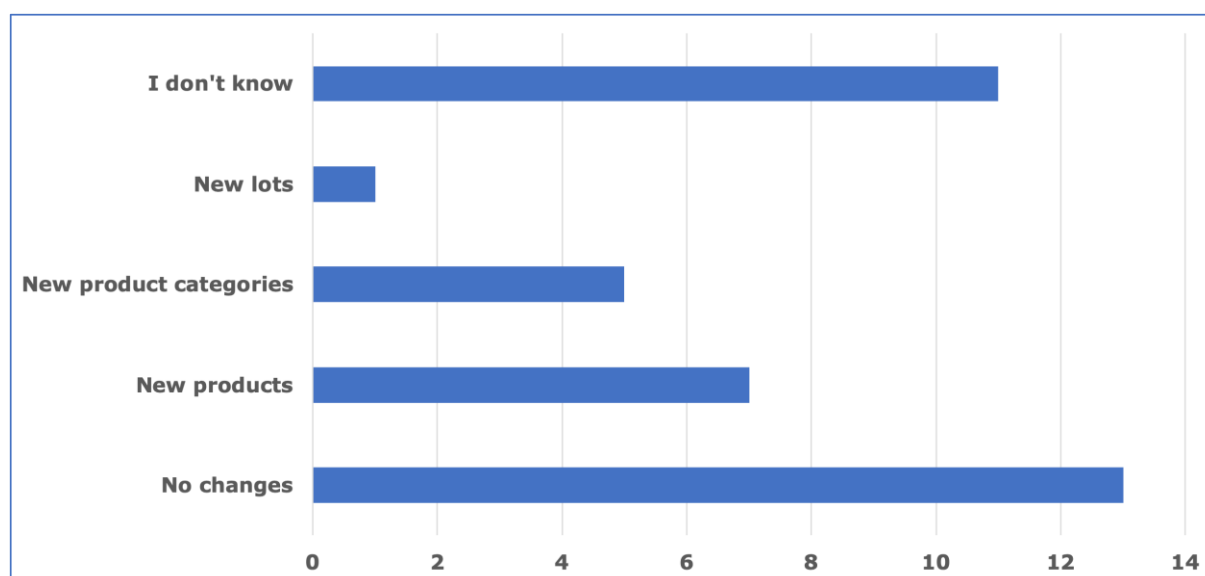


Figure 10: Supplementing the DPS - based on the questionnaire

In the survey, some Member States indicated that negotiations are used in a DPS, though this is not allowed under the Public Procurement Directive (see specific question 11.15 *Are negotiations allowed under DPS?*)

One-third of respondents use an eCatalogue. Use of the eCatalogue is becoming more widespread, but for the time being, there was no unambiguous answer to such interpretational questions as whether the contracting authority should request an eCatalogue template. There are Member States where it is already requested in the qualification phase and there are those where it is requested only after the qualification phase.

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

- A more open market within the DPS, with no maximum number of suppliers.
- The time span from qualification to winning 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 selection criteria are not precisely specified or they are too strict, this does not motivate tenderers to apply through DPS if there are small chances to win.
- It requires good support from the service provider, if users lack experience.

Despite the benefits of the DPS, respondents said that, in the time of COVID-19, framework agreement procedures were preferred. This may have been because 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.

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 Public Procurement Directive states that, in the case of DPS, the estimated value should be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the DPS¹⁴.

As the period of validity of DPS can be very long, the CA setting up a DPS can only roughly estimate the quantities of goods, services or works to be procured.

CAs with a consistent demand can determine the estimated value by calculating the estimated value for one year and then extrapolating it to the total term 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 at any time during the period of validity, if they are mentioned in the call for competition. The CPB has to consider this when calculating the estimated value.

11.2 How should the estimated value be calculated if the DPS is divided into lots?

If the DPS is divided into lots, the estimated value should be calculated both at the level of an individual lot and for the DPS as a whole. For the reasons mentioned in the answer to the previous question, the estimated value should represent the maximum amount expected 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 DPS¹⁵.

11.5 Can a CA leave a DPS?

The scope of allowed modifications and corresponding notifications is limited regarding the use of DPS. There are rules and corresponding notifications extending the period of the concerned DPS or terminating the DPS. Should other changes be needed, including as regards the initially identified buyers (change or addition of buyers), then a new DPS needs to be set up.

¹⁴ Public Procurement Directive Article 5(5) and Utilities Directive Article 16(5).

¹⁵ Public Procurement Directive Article 37(1) and Utilities Directive Article 55(1).

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

Even if a DPS is to 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 limits shall apply...' This is furthermore confirmed by the subsequent provisions of Article 34(2)(b) (time limit applicable for the receipt of tenders), which explicitly refers to Article 28. It says that, where appropriate, Article 28(4) shall apply but that Article 28(3) and (5) shall not apply.

Article 34(2)(a) (time limit for the receipt of participation requests) does not refer to any provision of Article 28. It says that 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 means of calling of 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.

11.7 During the set-up phase, can a CA temporarily postpone the examination of new applications after the time limit?

Article 34(5) and recital 64 of the Public Procurement Directive and Article 52 and recital 74 of the Utilities Directive describe the examination of requests to participate in a DPS¹⁶.

In accordance with the articles and specifically the recitals '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 DPS 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.'

This means that the CA shall examine participation requests received within the time limit (minimum 30 days). No specific procurement can be launched during this examination. Furthermore, CAs must indicate in the procurement documents the length of the extended evaluation period they intend to apply. After the set-up of the DPS, the CA can again start examining new applications.

11.8 When setting up a DPS, is it possible to examine requests for participation without waiting for the time limit?

The answer is that, as for the initial submissions to set up the DPS, there is nothing in the Directives that would prevent the CA from carrying out the examination as soon as requests to participate are received, as long as other conditions set by the Directives are respected.

Figure 3, which describes the qualification process during the establishment of a DPS, explains that all requests to participate can be examined even before the initial time limit for receipt of requests.

¹⁶ Public Procurement Directive recital 64 and Utilities Directive recital 74.

11.9 How does a DPS compare with a 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. A framework agreement is more rigorous, as the CA has the freedom to define the obligations for the suppliers to submit tenders, 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.

In the case of framework agreements, CAs can make tendering mandatory in mini-tenders, but this is not the case for specific procurements under a DPS.

In framework agreements, winning EOs will have higher expectations on the certainty of earnings in contrast to a DPS.

The use of eAuction and eCatalogues is 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 a specific procurement considering 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
Use of eAuction	Yes	Yes
Use 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 agreements?

The Public Procurement Directive does not provide guidance on whether DPS can be combined with framework agreements or not. There is no article, 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 provisions against it.

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

Case: Framework Agreements and DPS in Italy

The 2020 Financial Act (Law n. 160 27/12/2019) has 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 Italian CPBs (Consip and regional ones) in order to ensure timeliness and continuity in the offering of centralised FAs for CAs.

From a suppliers' side perspective, the higher speed related to the standardisation and digitalisation of the DPS should allow CPBs to run centralised 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 efficiently introduced in market segments where a large number of EOs exist such as the ICT industry.

11.11 Can a DPS be combined with eAuction?

There are rules that clarify that electronic auctions may be held on the reopening of competitions among parties to a framework agreement and on the opening for competition of contracts to be awarded under the DPS¹⁷.

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 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 for "commonly used purchases". The purpose of the two are, in other words, contrary.

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 are to accept the ESPD — consisting of 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 under Article 59(1)(a-c) in the Public Procurement Directive.

Before awarding contracts, the CA shall require the tenderer to submit up-to-date supporting documents in accordance with the rules of means of proof¹⁸.

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 procedure¹⁹.

The rules that stipulate that only a self-declaration (ESPD) needs to be submitted, and not all evidence, at the time of qualifying can also be interpreted when reading recital 64 in the Public Procurement Directive, where it says that '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'²⁰.

¹⁷ Public Procurement Directive Article 35(2).

¹⁸ Public Procurement Directive Article 59(4).

¹⁹ Public Procurement Directive Article 59(4) and recital 65.

²⁰ When a DPS is first set up, there can however be such a large number of requests for participation that the contracting authorities need more time to examine the request. See Public Procurement Directive recital 64.

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 is to be awarded to the tenderer that submitted the best tender based on 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 tender²¹.

In accordance with the Public Procurement Directive, the CA is to specify, in the procurement documents, the relative weighting that 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 alone²².

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 can be derived from this that in the case of indicating criteria in a 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 further specified, if the general division and description of award criteria published in the contract notice establishing the DPS are not changed.

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

11.15 Are negotiations allowed under DPS?

In accordance with the Public Procurement Directive, CAs must follow the rules of the restricted procedure when using a DPS²³. As negotiations are not allowed in restricted procedures, negotiations are not allowed either under a DPS.

11.16 Can selection criteria set out in a contract notice be changed while the DPS is active?

As, in a restricted procedure, the selection criteria cannot be changed, this applies also to DPS after setting it up.

11.17 How can selection criteria be applied in a DPS?

A DPS is open during the period of validity for all EOs that satisfy the selection criteria. A DPS can be divided into categories or even sub-categories of products, works or services. These must be objectively defined on the basis of necessary selection criteria that EOs need to fulfil to meet the objectives. In the forms, selection criteria can be defined for each lot.

Case: ICT DPS set up by Consip in Italy

The ICT DPS is structured in several 'qualification' categories such as server, network appliance, print and copy equipment, software, and maintenance services. For each category, usually the following selection criteria are required: specific revenue related to the category and ISO certifications. Each qualification category can be further split into 'product types'.

²¹ Public Procurement Directive Article 34(6).

²² Public Procurement Directive Article 67(5).

²³ Public Procurement Directive Article 34(2).

EOs can request to participate for one or more category, depending on their business area and their commercial strategy. Consip evaluates each request to participate and qualifies the EOs for each qualification category where they meet the criteria.

When a CA launches a specific procurement, the system will automatically invite all the EOs that are qualified to submit a tender for the qualification category related to the product types required by the CA. If the specific procurement requires product types that are related to more than one category, for example server and maintenance, the system will invite all the EOs qualified for all the related qualification categories.

11.18 Must EOs that are already admitted to the DPS be informed of newly admitted EOs to the systems?

No, there is no such obligation in the Directive. The DPS is an open system and all participants know this. 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 publication of the list of EOs. Nevertheless, in some Member States, such as Slovenia, there are national regulations that mandate the publication of any decision, which includes the publication of qualified EOs. In Estonia, for example, it is mandatory to publish the list of candidates after opening the requests to participate and also the tenderers after the tenders have been opened.

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

Yes, all tenderers must 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).

In addition, the communication must be accompanied by a summary of the relevant reasons, as set out in Article 55(2) of the Public Procurement Directive, and 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 must 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, see Article 1(1) 3rd subparagraph.

As regards the standstill period, please note that in accordance with 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) of 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 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.

11.22 Can charges be billed in a DPS?

It follows from Article 34(9) in the Public Procurement Directive and Article 52(9) in the Utilities Directive that 'No charges may be billed prior to or during the period of validity of the dynamic purchasing system to the economic operators interested in or party to the dynamic purchasing system.'

In the same way as for other types of procedures, this does not affect the possibility for a CPB to charge a commission or fee related to the turnover under awarded contracts from EOs or from CAs joining the DPS. This business model is used in some Member States to finance the CPB.

12 Dos and Don'ts

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

12.1 Dos

- DPS is still a rather new procurement method. Competence building for CAs and their procurement officers in setting up DPS, and for EOs for their participation, would therefore be helpful.
- Use available electronic tools that support the DPS process sufficiently and efficiently.
- CAs should conduct a preliminary market consultation and then inform the market about the DPS to attract new EOs, again because it is still a rather new procurement method.
- A DPS is targeted on off-the-shelf products, services and works.
- 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, CAs should plan the execution, especially as there might be many suppliers that want to be qualified. If 15 working 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, 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 EU rules and therefore should be published on TED.
- Providing information about qualified EOs in a DPS is good practice and already done in several 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.
- Selection criteria shall be proportionate to motivate SMEs to participate in the DPS.

12.2 Don'ts

- Negotiations 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, and only 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. eCatalogues are part of a tender in a specific procurement and are visible for CAs as parts of contracts.
 - Award and selection criteria cannot be modified in a DPS.
 - It is generally not advisable to combine a DPS with eAuctions, because DPS is already an efficient process. Combining it with eAuctions would make the process longer and less efficient. This means that process costs would increase on both sides considerably. In addition, DPS is a way to make public procurement more accessible to SMEs; applying eAuction would likely make it less attractive to them.
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13 Final remarks

Based on experience so far of DPS use, the following final remarks aim to further promote DPS use in the future.

13.1 DPS is an efficient tool and many benefits are identified

Experience so far has shown that DPS is an efficient process for procurement of goods, services and works where the requirements are easy to define and where electronic communication is sufficient.

It is easier with the use of a DPS to procure updates of products, which is more difficult to do when using framework agreements.

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

Specific procurements can be launched often and they can be divided into smaller lots to make it more attractive and possible for SMEs also to submit tenders and deliver. While SMEs can be qualified for a DPS, there is no obligation for them to participate in any specific procurement during the lifetime of a DPS. To participate is the decision of the SMEs. 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 time frame to make specific procurements is very short compared with other procurement procedures.

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

13.2 Further guidance important

Member State experiences so far show not only the benefits of DPS use but also that there are questions about the new way of working. Further information and promotion of DPS is important. This is so for CAs that will set up and run the DPS but also for EOs who need to be guided in the use of the new tool. It needs more concrete guidance at national level to reach 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 electronically, but the solutions are not interoperable. Experience shows, for example, that 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 harmonised 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 DPS use.

13.4 Use of eCatalogues is efficient

eCatalogues are also a useful tool for an efficient DPS process. They are now in use and can already be recommended. The example given in Section 7 on eCatalogues 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

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

13.6 Final word

Already today, there are benefits found by users, so do not hesitate to start with DPS. Several Member States have already started using DPS and they have had good experiences in using this procurement tool. The Annex presents several examples of DPS in operation.

Raising awareness and building knowledge is crucial to get DPS in place on a larger scale. Even if it is a rather new procurement tool, the benefits are already clear.

The EXEP subgroup that worked on these guidelines, hopes that you find this document useful.

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.

The 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 work primarily with data rather than documents prepared in their computer and uploaded in the system.

As of November 2020, there are 19 DPSs set up 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 DPS procedures varies currently between 10 and 20, but the numbers are likely to increase in time. The average period of validity for 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 realised and the DPS becomes a more frequent choice as compared with 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, a user guide is available. User training is on its way and hopefully awareness of, 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 a 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. At present, the development of the electronic public procurement system is constantly being negotiated by 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 – December 2018
- Product category - Chemicals, reagents, consumables. Estimated value: EUR 6m.

- Reason to choose a DPS – The DPS replaced a framework agreement (FA) procedure of 2.800 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
- Number of buyers participating – 1 (including 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 in 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
- Increased 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 Directive
- Price volatility
- The excluded bidder may return
- Pre-qualification is not efficient, which means that practically anyone can participate a DPS in comparison with a framework agreement
- The role of the flexible environment is greater in the case of DPS than in a framework agreement

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 or as a platform provided to CAs to run their own tenders.

Italy transposed the EU DPS legal discipline with no substantial integrations, under Article 55 of the new Public Procurement Code (published in 2016). This also stated that Consip, on behalf of the Ministry of Economy and Finance, could establish a national DPS system, available for all Italian CAs. Most DPSs established in Italy so far are related to healthcare products and services, given the high level of standardisation and large number of purchases that characterise this specific market.

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

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 PA* run by the Ministry of Economy and Finance through Consip S.p.A and which aims to support public administrations in managing their procurement processes by providing innovative and eProcurement solutions, a national DPS service is available for all 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, which 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. Public administrations can design and launch their specific procurements using the functionalities provided by the platform. On the supplier side, all EOs qualified for the specific product/service category are automatically invited and use the platform 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; and furniture.

During the first 9 months of 2019, more than 400 tenders were launched by more than 100 CAs for an overall notice value of EUR 3 billion. 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 standardise 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-threshold purchases) contributes to offer to CAs a comprehensive range of eProcurement tools, in order to meet their different buying needs. The main issues related to DPS's adoption are the relevant levels of information, education and support needed by users when they turn to this procedure for a first time, 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 be faced when the DPS adoption evolves to a more mature phase is the need to balance the will of CAs for a very flexible DPS that provides the largest set of tender customisation functions with the high level of standardisation 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 650,000 inhabitants, Rotterdam is the second largest city of the Netherlands. In contrast to Amsterdam, the purchasing function is fully centralised. Total budget is approximately EUR 3 billion, and 14 000 civil servants are employed. The total purchasing volume of about EUR 1,3 billion is contracted by a procurement department with 100 staff, 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 Public 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 second version of the DPS. Annually, approximately EUR 85 million is contracted through 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 in operation and 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 preselect all healthcare contractors based on the minimum requirements, to quickly run specific procurements within the pool of qualified contractors. The estimated annual value of such a DPS would be more than EUR 700 million.

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 compared with mini-tenders under 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 as compared with a framework agreement with one party; more labour intensive in both the admission and the requests
- Continuous capacity utilisation 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 participants leads, at times, to being less sensitive to 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 organisation 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% digital, 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 specific procurements.

Some suppliers are digital illiterates and do not understand the operation of an 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 (as is normally the case 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 does not have a central procurement management system, although there is a centralised publication system – Doffin – as a mandatory sender of eNotices to TED for all competitions above the EU threshold. The Norwegian Agency for Public and Financial Management (DFØ) has confidence in the suppliers 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. Merzell 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 in 2019 (above threshold – TED) was 10 313. The number of published DPS in 2019 was 78 by 39 contracting authorities. In the table below, you will find the development of the use of DPS for the last three years.

Year	No of CAs	No of DPS	Average no of DPS per CA	Max one CA
2017	8	26	3,25	13
2018	20	47	2,35	20
2019	39	47	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 use 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 show 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 per DPS goods interval	No of DPS services	No of suppliers per DPS services interval	No of bids per 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

Table 2 shows the number of active DPSs 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.

Today, Norway has no national DPS running from the national CPB, but there is an ongoing project 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, of users of DPS addressed 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 of more start-ups

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

14.5.3 The users' experience

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

- Easier to set up 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 procedures 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 top of a framework agreement
 - Market knowledge is important
- Areas evaluated:
 - Supplier markets
 - SMEs are satisfied with the use of DPS, compared with 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
 - Tailor-made request from DPS - support increased quality
 - Rethink the way of editing tender documents - set-up of the award criteria in a completely electronic process
- Time and productivity
 - Not enough experience to comment
- Price level – tenders
 - Goods – price level reduced due to increased number of suppliers/tenders
 - Services – no clear indications for the same results as goods

14.6 Country case: Slovenia

From 1 April 2018, 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 eSolution 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...).

DPS was being integrated in our national system in 2020, when this use case was prepared. The integration was being developed in cooperation with the IT-solutions provider. After a promising start, the development was slowed down due to the COVID-19 situation. Therefore, at the beginning the only systems providing DPS were by private consulting companies, but in 2021 a national eSolution became operational. Also, the integration of solutions for opening of competition in framework agreements has been developed in our national system.

With the national DPS system being under development at the time of preparation of this Guidelines, the Ministry of Public Administration played a role of an observer of other DPS systems, which enabled optimisations and future competitiveness of the DPS system being developed.

In Slovenia, in 2020 eight DPSs were in progress. Types of CAs using DPS comprised of municipalities, medical centres and other bodies, governed by public law, and contracting entities in the infrastructure field. DPS is most commonly used for the following types of contracts: medical equipment, medical waste-related services, construction, design, geodetic and safety services and works. As already mentioned, by then all DPS-based procedures in Slovenia were run by private consultant companies. Seven out of eight DPSs running in Slovenia were in the first phase and one was in the phase of specific procurements by the CA.

14.6.1 The case study

- Contracting authority: body, governed by public law
- Title: Medical waste-related services
- Short description:
 - Start date and end date: 7 March 2019, and the due date in 2025
 - Reason to choose a DPS: The reason behind the use of DPS by the CA 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: 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 wanting to participate
- Lessons learned & capturing practical questions arising from the implementation
 - After adoption and recognition of benefits of the DPS by CAs and suppliers, DPS will provide possibilities for comparable tenders and competitive prices

14.7 Country case: Sweden

The interest in 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 eProcurement and DPS in Sweden. The CAs procure their procurement systems; there are approximately 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 project 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. Nevertheless, 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 10 minutes per EO, time spent primarily checking the ESPD. The average time SKI spends on each specific procurement is around 2 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 4-year framework agreement.

SKI's second DPS was for purchasing electrical energy. This is 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 4 hours. Initially, there were many questions from CAs, in spite of well-prepared templates and guidance documents.

Since the first DPS was set up, 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 (including an evaluation model), but it is 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 for handling 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 with framework 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, as one example, to have online meetings as interviews for evaluation of consultants?

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 have been identified by SKI:

- There are difficulties with the completely electronic process within markets where 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 a 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 full.

14.7.1.3 Challenges and difficulties

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

- They can require many 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, for example, of Excel files requires a lot of resources compared with 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 set up and used by contracting authorities and an example is the municipality of Kristianstad, with 85 000 inhabitants and 8 000 employees.

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

The DPS for technical consultants was important to set up 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 4-year framework agreement. The DPS has resulted in two 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. Costs had increased by 871%. To set up 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). When the DPS was set up, 14 were qualified and today there are 35 qualified suppliers. 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 ensure the quality of the tender invitation.
- It is also important to decide on how to define the requirements
- 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.

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