

## THE ADVANTAGES OF THE DYNAMIC PURCHASING SYSTEM IN THE CONTEXT OF THE BULGARIAN REALITY

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### Abstract

*In the past few years, Bulgaria has made significant progress with a comprehensive reform of the public procurement sector. One of the main directions is the development of e-procurement. The introduction of e-procurement has allowed the use of procurement techniques that have not been widely used so far. One of these methods is the Dynamic Purchasing System (DPS). It is an entirely electronic process, the potential of which is yet to be unleashed. This method is part of the development and implementation of the Centralised Automated Information System “Electronic Public Procurement” (Cais EPP).*

**Key words:** dynamic purchasing system; electronic procurement; framework agreements; suppliers; public goods; public services; public procurement

**JEL:** H4, H57, H570

### Introduction

With the adoption of the new European directives in the field of public procurement in 2014 and their transposition into the new Framework Law on Public Procurement in 2016, Bulgaria took a new course towards comprehensive electronisation/digitalisation of public procurement. In this regard, more and more focus was given to the procurement tools. Among them are the Qualification System (QS), which is well known and used by the sectoral contracting entities, the Dynamic Purchasing System, Electronic Auction and Electronic Catalogues. The Dynamic Purchasing System (DPS) is a relatively new tool for electronic procurement, which so far has not been used in the organisation and preparation of public procurement among Bulgarian contracting entities. Therefore, the interest in it is yet to increase. Despite the lack of a clear definition in the directives and different interpretations for the application and type of DPS by the individual Member States, this article aims to indicate the advantages of this instrument. Along with the developed model of the QS applied by the sectoral contracting entities and the provided opportunity for comprehensive electronisation of the awarding process in the coming years, optimisation in the work of public

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contracting entities is expected, along with the framework agreements starting to apply the DPS. Characteristic of the DPS is that they are applicable by both public and sectoral contracting entities.

### **Nature of the Dynamic Purchasing System**

The Dynamic Purchasing System is an awarding tool that helps achieve three of the six strategic priorities set out in the European Commission Communication of 2017 on “Making public procurement work in and for Europe”. The DPS actually ensures wider access to the public procurement market, stimulating the digitalisation of the awarding process and ensuring greater transparency.

According to European law, this type of purchasing system is an entirely electronic process which is open throughout the period of validity to all economic operators meeting the selection criteria set by the contracting entity. In other words, in the case of DPS there is no limit when an economic operator can apply for inclusion, its documents will be examined. Pursuant to the rules, contracting entities cannot limit the number of economic operators admitted to the DPS. Thus, a higher degree of competition is ensured, greater access for small and medium-sized enterprises (SMEs) to the awarding process and provision of a pool of operators able to carry out the contracting entity’s applications, which, in the event of future implementation of a procedure, will eliminate the selection phase, thereby there will be saving time for the contracting entity. However, as a drawback, it shall be taken into account that the large pool of economic operators, included in the DPS, may result in the effect of loading the contracting entity in terms of the number of requests to participate and their processing by the commission appointed for that purpose. The pole hypothesis also poses a risk for successful awarding, namely the lack of an obligation for qualified participants to submit tenders. Another type of concern is the possibility that the wide-ranging DPS is not attractive to SMEs, as well as for the specialised suppliers, which could lead to the dominance of larger organisations as participants (Smith, 2016, p. 2).

As a counterpoint of the latter statement, there is another characteristic of this awarding instrument being the possibility of division of categories in the systems. These categories are divided into the three main directions by objects for products, works or services. The categories must be “objectively defined on the basis of the characteristics of the public procurement to be taken in the relevant category”. For the purposes of recital §66 of the preamble to Directive 2014/24/EU, it appears that the creation of categories in the DPS is envisaged in view of the possibility of SME participation in them. In order to ensure this possibility, it is necessary for the contracting authority to apply selection criteria which are proportionate to the characteristics of the category of products, works

or services concerned. To that end, they should be objectively defined on the basis of the characteristics of the public procurement to be performed in the relevant category. Those characteristics may include both the maximum permissible amount of subsequent specific contracts and indicate the specific geographical area in which the subsequent specific contracts are to be executed. In addition, the applicable selection criteria need to be specified in each specific category (arg. of Article 34, para.2 of Directive 2014/24/EU). According to Art. 83, para. 3 of the Public Procurement Law, the Dynamic Purchasing System may be divided into separate categories, which may be based on the maximum permissible amount of the expected specific orders, a specific geographic area in which they will be executed, or on other objectively defined characteristics related to the subject-matter of the contract. Thus, when awarding a contract under a given category, the contracting authority should invite all participants who are admitted to the specific category to submit a tender. The categories should be structured in such a way so as not to discriminate. Practical examples of categories in the DPS, according to Smith (2016) are:

- Car parking services, divided into three categories by geographical area;
- Delivery of office furniture, divided into four categories for: chairs, desks, meeting tables and other furniture;
- Construction and installation activities, divided into three categories for electrification, installations of fire alarm systems and installation of elevators.

Where the contracting entity divides the DPS into separate categories, for each category it should determine its characteristics and applicable selection criteria (Art. 83, para. 5 of the Public Procurement Law).

There is some mixing of the application of lots within the DPS and the creation of DPS categories. An explanation can be given by applying the principle of “divide or explain”. This means that under the rules on the use of lots, a contracting entity should decide whether or not to apply them within a given public procurement. Where it considers that it is not necessary, it should describe the reasons for the decision not to divide the public procurement into separate lots. For this reason, the lots do not concern the categories of the DPS. A further argument is that where a contracting authority establishes DPS and allows economic operators to it, it shall not award a contract. The award of a public procurement within the DPS takes place at a later stage after a separate procedure has been carried out. In this respect, the DPS rules do not use the term “lots”.

There are also specifics for the management of the categories within the DPS, from which the question of whether their management is permitted under the procedure applicable to the lots arises. In particular, the rules allowing contracting authorities to limit the number of lots for which an economic operator may apply. The answer to these questions is difficult in so far as there are no specific

provisions governing the management of categories in the DPS. It is generally agreed that the number of categories for which a qualified economic operator is to participate should not be limited. Limiting the participation of a particular person is rather contrary to the idea of the system, the aim of which is to create as much competition as possible. In this respect, all suppliers that pass the exclusion criteria and meet the selection criteria must be admitted to the DPS as well as to the relevant category/ies.

As examples of categories, individual specific items can be specified. The following examples of categories are given in SIGMA presentation:

- Gas and electricity at fixed prices;
- Low carbon electric micro - generators;
- Low carbon heating;
- Aggregates, asphalt, ready-to-use concrete;
- Courier services, solid fuels;
- Low electricity lighting systems;
- Road markings;
- Restoration of furniture;
- Construction services;
- Building renovation activities;
- Ground maintenance services;
- Construction, interior furnishing and maintenance of buildings.

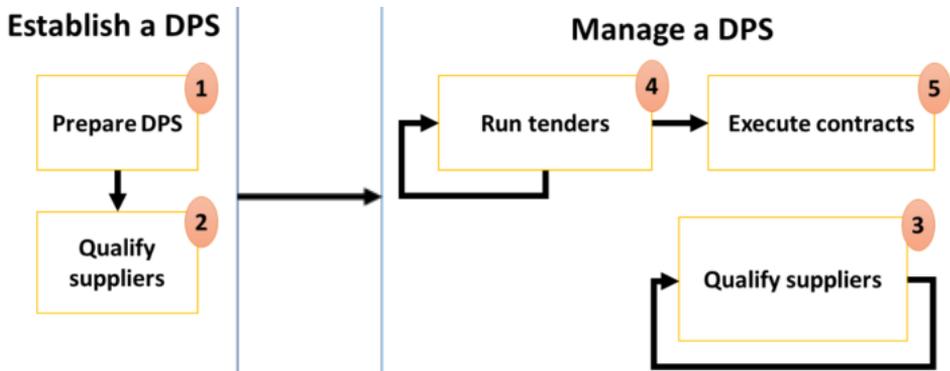
In accordance with the European legislation - Directive 2014/24/EU and Directive 2014/25/EU, the Bulgarian legislation also allows for the identification of categories when creating a Dynamic Purchasing System.

### **Creating a Dynamic Purchasing System and inclusion of applicants**

The DPS is open for its entire duration, i.e. any candidate who meets the selection criteria can apply for inclusion at any time. Access and participation in the DPS are free and free of charge for all interested parties. National law states that, in order to establish a DPS, the contracting authority should publish a contract notice, prior information notice or periodical indicative notice indicating that it establishes the DPS and determines its duration (Art. 84 of the Public Procurement Law). This order provides for the publication of the standard opening decision, stating explicitly that a Dynamic Purchasing System is being established. With the decision, a notice is approved disclosing the established system as well as the basic parameters such as the selection criteria, duration of the system, volumes and quantities of activities to be awarded through the system. Where possible, the estimated value for the whole system shall also be indicated. The contracting entity is obliged to indicate in the procurement documents the

nature and estimated quantity of the planned purchases, as well as whether the DPS is divided into separate categories, and also information on how it operates, etc.

On the other hand, any economic operator may submit an application for inclusion in the DPS within the period of its validity (Art. 85, para. 1 of the Public Procurement Law). The minimum period within which economic operators may submit applications for inclusion shall be 30 days from the date of dispatch of the contract notice for publication or the invitation to confirm interest where a prior information notice or periodic indicative notice is used as a call for participation in the procedure. Within 10 working days of receipt of the application, the contracting authority shall decide on the inclusion of the applicant in the DPS, applying the announced selection criteria. Where further verification of the fulfilment of the selection criteria is necessary, the period may be extended to 15 working days. There is also possibility of extending the 10-day period for examination of applications where no invitation to tender for the award of the first specific contract will be sent until the expiry of the prescribed period. In defence of the participants, the contracting authority shall not send an invitation to tender for the first specific contract before considering all requests to participate (Art. 85 Public Procurement Law) (Figure 1).



*Source:* Holmdahl, Kerstin Wiss. Dynamic Purchasing System, DPS, an efficient tool for procurement - presentation during the meeting of Subgroup DPS in EXEP. June 30-July 1, 2020.

**Figure 1:** Functioning of the DPS

### **Award of procedures within DPS**

There are two main stages of the creation of the DPS. These are the establishment/creation of DPS and awarding within the DPS.

In the case of awarding public procurement through DPS, the rules on restricted procedure shall apply. In this way, any economic operator/candidate who has submitted an application for participation and meeting the selection criteria of the system, should be allowed to participate in the procurement procedures within its period of validity. Subsequently, the contractor of the contract shall be determined in accordance with the award criterion and the indicators for assessing the tenders referred to in the notice or in the invitation to confirm interest. The contracting entity may at any time, within the duration of the DPS, request the admitted applicants to submit the ESPD with updated information on the requested data on the basis of which they are included in the DPS.

The appointment of a contractor for the procurement is done by means of the award criterion and the indicators for the evaluation of tenders. Where appropriate, those criteria may be set out more precisely in the invitation to tender (Art. 52 Directive 2014/25/EU).

In case it is necessary to update the information provided by the Participants, the contracting authority may require the admitted applicants to submit the ESPD with updated information on the basis of which it is included, at any time within the period of validity of the DPS (Art. 87 PPL). In addition to updating applications, the contracting entity shall have the right to extend or terminate its Dynamic Purchasing System. The change occurs by publishing the same template of notice, which created the system and the early termination by a contract award notice (Art. 88 of the Public Procurement Law).

Given the original nature of the DPS used by the contracting entities and the creation of prerequisites for economies of scale, the legislation provides for the possibility of using electronic catalogues representing the actual tender (Art. 94 of the Public Procurement Law). The possibility of submitting tenders in the form of electronic catalogues gives contracting entities the right to collect the necessary information for drawing up a tender for a specific good (Art. 93, para. 1, item 2 of the Public Procurement Law).

In addition to public and sectoral contracting entities, in order to extend the opportunities for participation of small and medium-sized enterprises in a Dynamic Purchasing System, for example in a Central Purchasing Body (Art. 95, para. 1, item 1 of the Public Procurement Law), the contracting authority/entity concerned should organise the process according to objectively defined categories of products, works or services. The Dynamic Purchasing System shall be implemented both to meet the needs of a particular contracting entity and by a centralised body which purchases for the benefit of other contracting entities. This possibility facilitates contracting entities that do not have the capacity to conduct multiple recurring contracts. Thus, the practice of contracting entities in the country would be uniform while saving time in the preparation of procedures.

The use of dynamic purchasing systems is particularly significant in cases where frequent purchases are awarded, the characteristics of which, as generally available on the market, meet the requirements of the contracting entities (Art. 52 Directive 2014/25/EU).

### **DPS and other procurement instruments**

This technique has some similarity with qualification systems. The QS are also open and at any time an interested party may apply for inclusion in the system. A specific feature of the QS is the possibility for a sectoral contracting entity to use a qualification system set up by another person when it considers that it meets its requirements, which in the case of DPS is not allowed. Since the entry into force of the Public Procurement Law (promulgated in SG No. 13 of February 16<sup>th</sup>, 2016, in force from 15.04.2016) until now the sectoral contracting entities have awarded approximately 200 public procurements within the framework of established qualification systems.

With the development and implementation of the Centralised Automated Information System “Electronic Public Procurement” (CAIS EPP) in the country, which provides similar opportunity for public contracting entities, contracting entities are expected to start applying DPS when awarding contracts for frequent purchases. For example, contracting entities may use a dynamic purchasing system for frequent purchases for food, stationery and office equipment where characteristics as generally marketed meet the requirements of the contracting authorities. Additional facilitation is the application of electronic catalogues by contracting entities as part of the requirements for applicants, which is indicated in advance in the documentation. Generally speaking, e-Catalogues are a type of “templates” that contain partially completed information, and participants should supplement their proposal, usually price. A maintained catalogue in the system can practically be created to be updated according to the requirements of the specific orders within the DPS.

### **The advantages of the DPS over a Framework Agreement (FA)**

Like each procurement instrument, the dynamic purchasing system has its advantages and disadvantages. In general terms, the advantages are related to a more open market within the life of DPS and no limitation in the number of suppliers; the time from being qualified to win a contract is short and there is no need for the supplier to guarantee goods or services when applying to be qualified. The supplier has the possibility to submit a tender with the parameters at a later stage. On the other hand, there are also several drawbacks, concerning the lack of sufficient experience, as it is quite a new means of awarding public

procurements; in cases where the qualification criteria are not very precise or are too strict, the participants are not motivated to apply for DPS etc.

Since it is a relatively new technique, and so far our country has not had an electronic solution for the implementation of the DPS, a common procurement method among the contracting entities is the conclusion of framework agreements, as well as conducting internal competitive choice on them. This approach is particularly used by the Central Purchasing Bodies (CCPs) as well as by the contracting entities that award frequently used products. More than 620 framework agreements have been registered for the period from 2016 to the first half of 2020, according to the Public Procurement Register, maintained by the Public Procurement Agency since 2004. This high share of framework procurements is indicative of the development of the potential of the DPS technique. In tabular form, the advantages of the DPS over FA are precisely presented (Table 1).

**Table 1:** Main differences between the DPS and FA

<b>Dynamic Purchasing System</b>	<b>Framework Agreement</b>
It is open throughout its duration to any candidate who meets the selection criteria	Following the conclusion of a framework agreement, the inclusion of new contractors is not permitted
There is no limit on the duration of the dynamic purchasing system	The duration of the framework agreement concluded by a public contracting entity shall not be longer than 4 years and for a sectoral contracting entity - 8 years
Contracting entities are not allowed to limit the number of candidates	Contracting entities may limit the number of participants with which to conclude the framework agreement
Used for frequently executed contracts, the type of which meets the requirements of the contracting entities	It is used for any contracts that can be awarded during a certain period of time
Individual categories may be defined	There is no possibility of individual categories
The dynamic purchasing system does not apply to contracts in the fields of defence and security	There are no restrictions on the applicability of the framework agreement

*Source:* Prepared under national and European legislation.

In addition to the differences in the two instruments, the question of whether the DPS and FA can be combined is also interesting. In the absence of sufficient rules to settle the matter in the directives, a rule is generally established that in the case of DPS, the contracting entity awards the contract and concludes the contract to the tenderer that proposed the best tender, whereas the purpose of FA is to determine the conditions on the basis of which contracts are awarded for a certain period. Although DPS aims at continuously awarding contracts, with the possibility of many participants qualifying, in some Member States, including Italy, an approach has also been adopted within the framework of DPS to be awarded also FA. This is conditioned by the timeframe for conducting FA.

### Experience in other Member States

When reviewing the usability of DPS in other Member States of the European Union, it is clear that DPS is also applied along with the framework agreements. Dynamic purchasing systems are a commonly used technique, mainly by public contracting entities, as a large part of the countries have gained experience in their implementation. The following table presents the main data on the implementation of purchasing systems in other countries (Table 2).

**Table 2:** Experience of other Member States in the implementation of DPS

<b>Scotland</b>	Guidelines for the use of DPS and a checklist to assist contracting entities on the possibility of using the DPS have been developed.
<b>England</b>	A manual on the nature of the DPS and frequently asked questions has been drawn up.
<b>Slovakia</b>	They're using DPS, but there are a number of problems. They are working on the possibility of incorporating the framework agreement into the DPS.
<b>Slovenia</b>	Currently they implement mainly framework agreements for all kinds of procurement subjects (works, supplies and services), i.e. similar to Bulgaria.
<b>Austria</b>	Framework agreements are used for all types of contracts and, in some cases, with options. DPS is only used for commonly used purchases, and options (for extension) are not used as it is an open system.
<b>Cyprus</b>	They're using DPS. They indicate that the combination between DPS and FA is useful for meeting needs within a specified period of time or within a specific area.
<b>Italy</b>	They're using DPS. As regards the award of FA within DPS, according to them it is allowed but it is not clear how this possibility can be compatible with the rules of appeal provided for in EU Directive 2007/66/EC. Recital 9 of the Directive justifies an exception to the applicability of the standstill period by stating that in "cases of contracts based on FA or DPS, the existence of a mandatory suspension period may have an effect on the increase in efficiency provided for in those tendering procedures". According to them, contracts awarded under the DPS are ordinary public procurements and may therefore contain options and renewals in accordance with current legislation.
<b>Latvia</b>	They do not currently use DPS but intend to encourage contracting entities to implement it.
<b>The Netherlands</b>	In 2018, 135 notices of contracts were published in the Netherlands on the basis of a dynamic purchasing system. The two main categories of purchases made using DPS are ICT (information and communication technologies) components and recruitment of (temporary) personnel.

*Source:* Survey among EU Member States. Member States' questions on the implementation of the new directives in the field of public procurement through the contact list of representatives of the EC Government Expert Group on Public Procurement (EXPP), 2019

## **Conclusion**

In conclusion, it can be summarised that the potential of DPS is to be known by the Bulgarian contracting entities, which will stimulate its implementation. Its advantages such as easy access, accessibility to one or more categories, when the system is divided into categories, submitting an application for inclusion at any time, shortening the time limits for carrying out procedures within the system and the savings received will be an incentive to use it along with the framework agreements. The possibility for DPS to be applied by CPBs also suggests that in the coming years the technique can even replace the widespread use of Framework Agreements when contracts concern supplies, services and works. The evidence in confirmation of the thesis presented in the study is the increased level of competition, publicity and transparency in the procurement process, as well as the easier access to the market for SMEs. They are a consequence of the obligation to use CAIS EPP. Based on the data of the Public Procurement Register of the national platform, for the period June 14th, 2020, when the obligation to use the system is provided for all contracting authorities in the country, until October 14th, 2020, for 3,008 from 4,216 in total public procurements launched, there are 11,771 offers submitted. This makes an average of four bids per tender. Applying the available electronic awarding techniques and creating skills and competencies in the contracting authorities to work with them, the creation of an easier access to the public procurement market is expected. In this way the number of the bids will be increased.

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