

# Dynamic Purchasing Systems

## OGC Guidance on Dynamic Purchasing Systems in the Procurement Regulations



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### **Dynamic Purchasing Systems in the Public Contracts and Utilities Contracts Regulations**

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## **1. Background**

- 1.1 A dynamic purchasing system (dps) is a way for a contracting authority to purchase certain goods, works or services.
- 1.2 The procedure is set out in Article 33 of the Public Sector Directive<sup>1</sup> and Article 15 of the Utilities Directive<sup>2</sup>. The provisions are outlined in similar terms. They are implemented by Regulation 20 of the Public Contracts Regulations<sup>3</sup> and Regulation 19 of the Utilities Contracts Regulations<sup>4</sup>, which came into force on 31 January 2006. It is important for any contracting authority proposing to use a dps to consult the Regulations, which set out the procedure to be followed. However, the questions and answers set out below provide general information about this provision.
- 1.3 This guidance is not intended as a substitute for project specific legal advice, which should always be sought by a contracting authority where required.

## **2. What is a dps?**

A dps is a completely electronic system which may be established by a contracting authority to purchase commonly used goods, works or services. It has a limited duration.

## **3. Who may be admitted to a dps?**

A dps must be open throughout its duration for the admission of any economic operator<sup>5</sup> which satisfies the selection criteria specified by the contracting authority and submits an indicative tender to the contracting authority which complies with the specification.

## **4. What is an “indicative tender”?**

This is a tender prepared by an economic operator seeking admission to a dps. The tender sets out the terms on which the economic operator would be prepared to enter into a contract with the contracting authority should that contracting authority award a contract under the dps.

## **5. Must a dps be an electronic system?**

Yes, a dps must be set up as a completely electronic system. Electronic means must be used to establish the system and award contracts under it.

## **6. What sort of goods, works or services is a dps suitable for?**

The Directives and Regulations say that a dps may be used to purchase “commonly used” goods, works or services. Whilst there is no definition, it is clear that this covers a wide range of goods, works or services and a contracting authority will have scope to apply it to anything which it reasonably believes to be commonly used. A dps is

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<sup>1</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31<sup>st</sup> March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. See: [Official Journal L 134](#).

<sup>2</sup> Directive 2004/17/EC of the European Parliament and of the Council of 31<sup>st</sup> March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors. See: [Official Journal L 134](#).

<sup>3</sup> [http://www.opsi.gov.uk/si/si2006/uksi\\_20060005\\_en.pdf](http://www.opsi.gov.uk/si/si2006/uksi_20060005_en.pdf).

<sup>4</sup> [http://www.opsi.gov.uk/si/si2006/uksi\\_20060006\\_en.pdf](http://www.opsi.gov.uk/si/si2006/uksi_20060006_en.pdf).

<sup>5</sup> An economic operator is a services provider, a contractor or a supplier. A contracting authority will contract with a services provider for a public services contract, a contractor for a public works contract or a supplier for a public supply contract.

essentially designed to cover regular “off the shelf” purchases, for example, the procurement of Electricity or Gas supplies.

## **7. Is it now compulsory to use a dps for commonly used purchases?**

No, this is an entirely optional procedure, designed to assist contracting authorities to achieve better value for money for commonly used purchases.

## **8. How is a dps established?**

The main procedure for establishing a dps is set out below:

- 8.1 The contracting authority advertises the establishment of the dps using the rules of the open procedure. No other procedure can be used.
- 8.2 The contracting authority establishing the dps must offer unrestricted, direct and full access to the specification and to any additional documents by electronic means from the date of publication of the contract notice to the date when the dps ceases to be operated.
- 8.3 Any economic operator interested in joining the dps, and which meets the selection criteria, can submit an indicative tender setting out terms for supplying the requirements.
- 8.4 The contracting authority must usually evaluate the indicative tender within 15 days of the date of its submission. It must admit to the dps any economic operator if the indicative tender complies with the specification and any additional documents produced by the contracting authority.
- 8.5 Once admitted to the dps, an economic operator may improve an indicative tender at any time.

## **9. How are contracts procured under a dps?**

- 9.1 When a contracting authority wishes to order goods, works or services under the dps, it first must advertise its intention using a simplified Official Journal of the European Union (OJEU) Contract Notice specifically designed for a dynamic purchasing system inviting anyone interested and not yet admitted to the dps to submit an indicative tender. This standard form of notice is available at the internet address <http://simap.eu.int/>
- 9.2 The contracting authority must evaluate the indicative tenders it receives and admit to the dps any new economic operator if the indicative tender meets the contracting authority's specification.
- 9.3 The contracting authority may then issue invitations to submit tenders for a particular order or contract within a time limit specified by the authority to everyone admitted to the dps.
- 9.4 The contracting authority awards the contract to the economic operator which submits the tender which best meets the award criteria specified in the contract notice for the establishment of the dps. If the contracting authority thinks it is

appropriate, it may first formulate the award criteria more precisely in the invitation to submit tenders.

**10. Can a charge be made for the cost of setting up the dps?**

No, a contracting authority must not charge an economic operator for admission to a dps or for any aspect of the dps.

**11. For how long does a dps last?**

11.1 A dps must not last for more than 4 years unless there are exceptional circumstances.

11.2 The Regulations do not give a definition of “exceptional circumstances” and in any case where a contracting authority believes that it might be appropriate to extend the duration of a dps beyond 4 years, it should consider carefully whether its particular circumstances could be considered to be exceptional, taking legal advice where necessary.

**OGC**

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