

Public procurement contracting in Denmark

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1. Background

- The Danish construction industry and the Danish construction companies have been the subject of severe criticism in the public debate.
- The criticism has ranged from low growth in productivity to lack of transparency concerning the relationship between price and quality.
- The Danish Ministry of Housing and Urban Affairs and the Danish Agency of Trade and Industry have due to the criticism prepared the report "The Danish Construction sector in the Future".
- The report, which was published in December 2000, suggested various solutions to the criticism, including the establishment of a Benchmark Centre for the Danish Construction Sector.

2. The Benchmark Centre for the Danish Construction Sector

- The Danish construction industry followed up on the criticism by deciding in December 2001 to establish the Benchmark Centre for the Danish Construction Sector (BEC or the Benchmark Centre):
- <http://www.byggeevaluering.dk/index.php?code=1>.
- It was among the objects of the centre to develop and operate a benchmarking system with Key Performance Indicators (KPIs) for the construction process as well as for the finished building.
- The purpose of the Construction Benchmarking system is:
 1. To enhance transparency in the market
 2. To enable the parties to choose the best business partners
 3. To enable the individual clients to make their own benchmark
- Today the Construction Benchmarking System plays an essential role in the public construction sector.
- The overall reason for this is, that the Danish Government in 2003 announced that a part of the official construction policy would be to make the construction benchmarking compulsory.
- The system is not based on international rules.

3. The Implementation of the Benchmarking System

The implementation of this policy has taken place in two steps:

1. The Statutory Order No. 1394 dated 17th. December 2004 was the first step. According to the order, Key Performance Indicators (KPIs) are compulsory for Danish State constructions under the Government Construction Act.

2. The Statutory Order No. 136 dated 9th. February 2007 was the second step. According to this, KPIs are compulsory for an independent institution constructing a) youth residence, b) housing for the elderly, c) housing for families. (Danish: alment byggeri).

4. Key Performance Indicators

What is Key Performance Indicators (KPIs)?

- It is information about previous work evaluated by an external part on the basis of information provided by the parties in the work. The evaluation is typically done by The Benchmark Centre.
- However, a former client or external benchmarking agent can be used as well, if the evaluation of KPIs is corresponding to the calculation conditions used by The Benchmark Centre.
- Foreign companies which have not obtained KPIs from previous work in Denmark may instead submit documentation corresponding to KPIs from work in other countries.
- The system is described in details in the booklet "Benchmarking Danish Construction": http://www.byggeevaluering.dk/db/files/bec_uk_2006.pdf

5. Statutory Order No. 1394 dated 17th. December 2004

When does Statutory Order No. 1394 dated 17th. December 2004 apply?

Two basic conditions concerning price and client must be fulfilled

1. The Price

- The project price has to **exceed** 5 million Danish crowns (DKK) (approximately EUR 675,000). However, if the specific contract work is below 300,000 DKK (app. EUR 40,000), KPIs are only optional, even though the total project exceeds 5 million DKK.

2. The client

- must be a public sector client whose construction projects comes within the Government Construction Act (construction, rebuilding and extension of **every state owned building** except infrastructure projects).
- or an **institution that receives at least 50 per cent** in operating subsidiaries from the state.

What does the Statutory Order No. 1394 dated 17th. December 2004 require?

- The statutory order deals with two different situations concerning the KPIs – section 4 and 5:
 - Section 4 relates to KPIs for previously evaluated construction projects to be used for tendering
 - Section 5 relates to the evaluation for the current construction project, which will lead to the KPIs in the grade

The KPIs must, besides the KPIs referred to in connection with Section 4, include data on:

- Construction time
- Price level
- Price changes during construction
- Efficiency

6. Statutory Order No 136 dated 19th. February 2007

When does the Statutory Order No 136 dated 19th. February 2007 apply?

Two basic conditions concerning price and client must be fulfilled:

1. The price

- The project must exceed 5 million DKK (app. EUR 675,000). However, if the specific contract work is below 300.000 DKK (app. EUR 40.000), KPIs are optional, even though the total project exceeds 5 million DKK

2. The client

- The client must be an independent institution whose construction project is one of the following: a) youth residence, b) housing for the elderly, c) housing for families.

What does the Statutory Order No. 136 dated 19th. February 2007 require?

- The structure is practically the same as the structure of the Statutory Order No. 1394 dated 17th. December 2004.
- KPIs is thus used to select a contractor as well as to show how the parties evaluate the performance of a project.
- However, the use of KPIs are not compulsory for **selection** of a contractor before the 1th. of September 2008.
- **Evaluation** of the project has been compulsory since the 1th. of march 2007.

7. The Contractor's Grade Book

What is a contractors grade book?

- The grade book contains the evaluation for contracts performed by the contractor (the company's KPIs).
- The contractor is provided with a grade book when three contracts have been evaluated.
- Projects that are more than three years old are deleted from the grade book. This should motivate the companies to improve.
- The grade book must be used when submitting a tender.

(Please find examples on grade books in respectively English and Danish enclosed as appendices)

The evaluation

- The Benchmark Centre's role is to collect the data, that shall be used to evaluate the contractor's performance and thereby enable The Benchmark Centre to calculate the KPIs.
- The data is collected from the different parties during the construction process (e.g. the client, the entrepreneur, the architect, the subcontractor etc.).

Conflict

- If problems arise during a project, or if the parties disagree on what is to be reported, the Benchmark Centre will offer its assistance to reach a solution.
- If no solution can be reached, the evaluation is cancelled.
- In case, no data will be recorded about the project in the grade book.
- However, the project will be mentioned in the grade book and thus reflect in how many projects no grades have been given.
- If a grade book has recorded many projects without KPIs this may cause a negative impression on future clients.

The Client's Notebook

- Factsheets for each construction project enables the client to benchmark individual construction projects against each other and the average indicators in the notebook.
- The client can also benchmark his individual projects and his notebook against similar data from other clients not mentioned by name.
- The client's notebook is more comprehensive than the company's grade book.
- In addition to the data contained in the grade book, the notebook includes data on efficiency, price changes, price level and records of forms of collaboration chosen (such as partnering).
- BEC's version of the client's notebook features 32 different indicators.
- **Unlike the company's grade book, the notebook is not used for selecting business partners.**
- There are therefore no requirements as to the number of projects that must be recorded or how long the projects may feature in the notebook.

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Useful links:

The Benchmark Centre for the Danish Construction Sector:
<http://www.byggeevaluering.dk/index.php?code=1>

The Booklet "Benchmarking Danish Construction":
http://www.byggeevaluering.dk/db/files/bec_uk_2006.pdf

Danish Enterprise and Construction Authority:
<http://www.deaca.dk/>

The Danish Construction Association:
<http://www.danskbyggeri.dk/C1256C6F0051C591/0/7F892EA1D3B491D7C12572AC0028B839>

Facts about PLESNER

- Origins dating back to 1918
- Among the three largest law firms in Denmark (belonging to the Danish "Magic Circle")
- 170 fee earners and a total staff of 310
- Expertise and capacity for any business law assignment
- Dynamic and informal professional environment
- Denmark Law Firm of the Year 2007 (awarded by International Financial Law Review)

Business Strategy

- State-of-the-art legal know-how, service and facilities
- Strong business outlook
- One-office concept
- Non-exclusive close relations with leading law firms throughout the world
- Good friends' relationships with one or two top firms in key jurisdictions
- Top code of conduct and quality management system
- Recruitment and retention of the best candidates

Client Strategy

- Dedicated to understanding and supporting the business interests of our clients
- A recognized and consistent Plesner approach to clients
- Client Relationship Management to optimize service:
 - one or two contact partners
 - partner monitoring throughout a project

Baggrunden og idéen med karakterbogen

Siden 1. januar 2004 har statslige byggesager over 5 mio. kr. stillet sig til en række udvalgte projekter. Og fra 1. juni 2005 skal virksomheder, der ønsker at byde på statslige byggesager, være i stand til at anvende nøglefaktorer og kvalitative gennemførelsesprincipper.

De nye regler findes i: Beskrivelse af anbudens indhold af offentlig privat partnerskab (OPP), beskrivelse og oplysninger om evaluering af byggesager (nr. 1204 af 17/12/2004). Ifølge fremgår det også, at de udvalgte virksomheder, som skal bygge for staten, skal oplyse nøglefaktorer om på påbegyndt byggen, når det afleveres og ved 1 års efterfølgende.

Reglerne er et af flere initiativer, staten har taget for at fremme en mere lønlig udvikling i byggesektoren og at sikre kvaliteten i nye projekter og større projekter. Benchmark og nøglefaktorer vil være væsentlige i den forbindelse.

Indi videre er det alene statens område, som er omfattet af nøglefaktorer. Men det forventes, at reglerne også vil komme til at gælde for kommuner, amter og selvstyrende boligbyggerier.

Sådan bliver nøglefaktorerne til:
Evalueringen af en byggesag indeholder, at både bygherre og virksomheder deler sig om oplysninger om den konkrete byggesag. På grund af disse oplysninger bliver virksomhederne bedømmet og får udleveret et karakterbrev til hver enkelt entreprise, der har fået evaluering. Når en virksomhed har fået karakterbrevet, kan den 1 år senere se sin karakterbrev. Nøglerne i karakterbogen giver et overblik over de forskellige virksomheders adgang til at byde på statslige byggesager.

Et udvalgte væsentlig til karakterbogen beskriver virksomhedens kompetencer på forskellige områder udtrykt som et gennemsnit af nøglefaktorerne på de sager, virksomheden har fået evaluering. For dem byggesager, der er taget vækst på, på byggesag skal det således til det at have tilsvarende nøglefaktorer, der er god til at overholde kvaliteten. En anden

byggesag vil måske vurderes omkostet kvaliteten af virksomheden, der byder på opgaven.

På denne måde bliver karakterbogen et effektivt udvalgsredskab væsentlig for bygherren eller for entreprenøren, der har vilje til at byde på opgaven, udføre af underentrepriser. Virksomheder med gode karakterbrev vil selvfølgelig se godt ud, når de skal konkurrere med andre virksomheder om nye byggesager. Omvendt kan den ansatte virksomheder med mindre gode karakterbrev på et eller flere områder til at forbedre sig på disse områder.

En karakterbrev understøtter således over tid, men læst her og nu vil den vise et billede af virksomhedens kompetencer på et givent tidspunkt.

I det følgende kan man se mere om, hvad lærerne i karakterbogen står for, og på hvilken måde de er valgt ud til at være i karakterbogen.

Byggesagernes gennemførelsesprincipper

Det er Byggesagens Evaluering Center, der endrømmer og beregner nøglefaktorer for de byggesager, der vil blive op til den entreprise, som har fået evaluering. Centret blev stiftet i 2002 med det formål at udvikle og drive et regelsystem for byggesager. Dagligt står et sæt af byggesagerrepræsentanter af de organisationer, der er nævnt på forordet af denne karakterbrev.

Reglerne for evaluering

Den byggesag kan man få vurderet kvaliteten af en karakterbrev via Læsernummernet, der er angivet nederst på siden for hver byggesag. Kontakt til Læsernummernet er på tlf. 32 04 14 40 og oplys Læsernummernet. Centerets medarbejdere kan efterfølgende udføre kontrolen.

Karakterbrog

Virksomhed	Murerfirmaet AIS		
CVR	12345678		
Virksomheds gennemførelsesprincipper			
Tilføjelser	Fantastiske udførelsestil i forhold til planlagt udførelsestil	103,2 %	63
Kvalitet	Fantastiske udførelsestil indtil overstyret mangelfuldførelsesperiode i forhold til planlagt udførelsestil	110,3 %	43
	Udførelse af mangler i det første år efter aflevering (Se note 1)	8,6 timer pr. mio. kr.	62
A0	Antal ikke afleverede mangler	21,0 pr. mio. kr.	50-75
A1	Antal mindre alvorlige mangler	3,0 pr. mio. kr.	0-25
A2	Antal alvorlige mangler	1,2 pr. mio. kr.	50-75
A3	Antal kritiske mangler	0,1 pr. mio. kr.	0-25
U1	Antal anmærkninger som bør undersøges nærmere	0,0 pr. mio. kr.	ikke aktuel
Arbejdsmiljø	Ulykkesfrekvens	10,0 udgifter pr. mio. timer	60
Kundetilfredshed med byggeprocessen (Se note 2)	Kundetilfredshed	3,6	59
	Virksomhedens vurdering af dens underentrepriser	3,2	53

Note 1: På baggrund af opgaven af karakterbogen kan der foretages ændringer, hvis der på et tidspunkt oplyses om ændringer af mangler og hvis der er ændringer.
Note 2: Karakterbrog er opdelt i fire forskellige karakterbrev. 1 = Meget værd og kvalitet, 2 = God kvalitet, 3 = Meget bedre og kvalitet.

Vejledning til karakterbogen

Talene i karakterbogen på siden her viser et eksempel på grundlag af de oplysninger, virksomheden har fået evaluering. Den er opdelt i to tabeller. I den første vises de karakterer, virksomheden har opnået, i den anden er der angivet de to grundlag, som virksomheden er blevet bedømt på.

Kolonne "Område"
Virksomheden bedømmes på fire områder, nemlig tilstand, arbejdsplads, kvalitet og kundetilfredshed. For hvert område angives et eller flere nøglefaktorer.

Kolonne "Nøglefaktorer"
Her angives hvilke konkrete nøglefaktorer, virksomheden er blevet bedømt på.

Kolonne "Virksomhedens gennemførelsesprincipper"
Ved virksomhedens gennemførelsesprincipper, gennemsnitligt beregnes på grundlag af de sager, virksomheden har fået evaluering. Når der påføres tilstand, vises talene i procent. Et tal på 100, betyder det, at virksomheden i gennemsnit har afleveret for sig ligge tabel på netop 100. Betydningen af virksomhedens afleveret præcise tilstand. Et gennemsnit på over 100 betyder, at virksomheden som regel afleverer for sent.

Kolonne "Score (%)"
Her kan man se virksomhedens benchmark score. Den opgives mellem 0 og 100 %. Scoren er relativ og beskriver

hvor virksomheden er placeret sammenlignet med de andre virksomheder. Byggesagens Evaluering Center har evaluering.

En score på eksempelvis 92 %, betyder, at 92 % af alle virksomheder i byggesagens område har fået en højere score end den evaluerede virksomhed, mens kun 8 % har opnået bedre resultater. 100 % er altså et udtryk for, hvem der har fået sig bedst score for det pågældende nøglefaktorer.

For nøglefaktorerne ved errene mangler opgaves bedømmelse scoren fra 0-20, 25-50, 50-75 og 75-100. At virksomheden opnår en score på eksempelvis 50-75 betyder, at halvdelen (50 %) af alle virksomheder i gennemsnit har flere mangler end den evaluerede virksomhed, mens kun 25 % normalt afleverer byggesager med færre mangler.

Tabellen "Bedømmelsesgrundlag"
Her vises, hvor mange sager, virksomheden har fået evaluering, opgaves samlede entreprisværdi og hvordan de er fordelt på byggesager og reparationsarbejde.

Deruden vises det antal sager, hvor evalueringen er afbrudt, eller hvor enkelte karakterer ikke har kunnet gives. Fordi partene ikke har kunnet blive enige om karaktererne eller ikke har ønsket at meddelt. Det kan fx skyldes sig om, at virksomheden har nægtet at indberette oplysninger til Byggesagens Evaluering Center. At virksomheden og bygherren er uenige om, hvilket byggesager er rettidig afleveret eller om antallet af mangler.

Bedømmelsesgrundlag

Projekttype	Antal evaluerede sager (se note 3)	Samlet entreprisværdi på evaluerede sager (i mio. kr., 1000 personer)
Tilbygning	15	Over 100
Reparation og vedligeholdelse	8	25-100

Note 3: Indtægter, sager, der er blevet holdt eller annulleret, fjernes fra grundlaget.

Dette karakterbrog er godkendt af Byggesagens Evaluering Center, som indstiller for rigtigheden af ovenstående oplysninger.



Grade book

Company: Construction Company Ltd.

CVR No.: 12345678 Area	Key Performance indicator	Average for company	Score in %
Deadlines	Actual construction time measured against planned construction time	100.0 %	63
	Actual construction time including defects liability period measured against planned construction time	106.3 %	54
Quality	Remediation of defects in the first year after handing over (note 1)	Not applicable	-
	A0: Number of minor defects	1.0 per DKK 1 million	50-75
	A1: Number of less serious defects	0.5 per DKK 1 million	0-25
	A2: Number of serious defects	0.2 per DKK 1 million	0-25
	A3: Number of critical defects	0.1 per DKK 1 million	0-25
	UN: Number of defects to be investigated further	0.0 per DKK 1 million	Not applicable
Health and safety	Accident frequency	0.0 accidents per one million manhours	100
Customer satisfaction with the construction process (note 2)	Customer satisfaction	3.6	59
	The company's evaluation of its subcontractors	3.5	68

Note 1: At the time of preparation of the grade book there may be contracts in respect of which data on remediation of defects during the first year after handing-over have yet to be gathered.

Note 2: The indicator has been calculated from 11 questions using the following scale: 1 "Much worse than expected", 3 "As expected", 5 "Much better than expected", when expectations are equal to "average" contractor performance.

Assessment basis Project type	Number of projects evaluated	Total contract sum for evaluated projects expressed in million DKK (2004 price level)	Number of projects on which the evaluation has been abandoned (note 3)
New build	13	25-100	1
Repair and maintenance	4	Less than 25	0

Note 3: Projects the evaluation of which has been abandoned or where the parties could not agree or did not wish to participate..

*This grade book has been approved by The Benchmark Centre for the Danish Construction Sector,
which guarantees the correctness of the data set out above.*