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Benchmarking 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.

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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

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2. The Benchmark Centre for the Danish Construction Sector



- 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.

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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).

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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

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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 book.

Section 4 (use of KPIs/gradebook for selection)

- Section 4 concerns the requirements relating to submission of KPIs in connection with the selection of contractors.
- If a company is unable to produce KPIs, the company may not be taken into consideration for the project, although the final decision on this depends on the specific tender conditions.
- The selection criterion may include other requirements than KPIs, but the requirement concerning KPIs must be one of the criterions.

- However, the requirements relating to submission of KPIs does not apply if the company has not been registered for VAT in Denmark - or for the equivalent in foreign countries - for at least two years.
- This exception is based on the fact that often new companies do not have sufficient construction experience to obtain KPIs.

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

- Seen from a public procurement perspective, the demand for KPIs must be seen as documentation of the company's technical and financial capacity.
- Therefore, **KPIs** are a part of the selection criterion and **can not be reused when the contract is awarded.**

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

The KPIs must, as a minimum, include information on:

- Compliance with time schedules
- Quality
- Health and safety at the workplace
- Customer satisfaction

The KPIs referred to, relate to the company's previously evaluated construction project.

The figures may not be more than three years old (calculated from the date of inspection for defect).

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Section 5 (evaluation of an ongoing construction for the grade book)

- According to Section 5 of the statutory Order, the contractors must submit KPIs for a specific project at the time of handing over the project and in connection with the one-year inspection.
- The company must conclude an agreement with an external benchmarking agent (typically The Benchmark Centre) on gathering of KPIs for the project in question.
- The agreement must be made before the work begins.

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.

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

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.

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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)

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7. The Contractor's Grade Book

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.).

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7. The Contractor's Grade Book

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.

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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.

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The Client's Notebook

- 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.

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The Client's Notebook

- **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>

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OF
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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)

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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

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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

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