



Standard Forms of Contract

What rules are usual when constructing for public entities?

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Public entities in Denmark

The definition of "public entities" is a true hydra, being variable from state to state, each with its own regulations and pitfalls - I have focused on the devil I know:

- The State
- The Regions (5)
- The Municipalities (98)
- Wholly or partially state-owned legal entities such as key infrastructure, transport, energy and utility companies (32)

The AB system

- Almindelige Betingelser = General Conditions.
- Created by a counsel of public and private parties, including state and consulting organisations.
- The AB system is a private law system designed to cater for both public and private interests; employer as well as contractor.
- Mandatory use without particular conditions for all public entity contracting.
- Similar to FIDIC in many aspects.

The AB Contracts

The AB suite of contracts consists of:

AB 92

- General Conditions for the provision of works and supplies within building and engineering (comparable to FIDIC Red Book).

ABT 93

- General Conditions for turn-key contracts (comparable to FIDIC Silver Book).

ABR 89

- General Conditions for Consulting Services (comparable to FIDIC White Book).

The AB flaws

- Old system (+100 years).
- Deemed to be private law which is questionable when contracting with public entities.
- Fails to cater for social considerations which public entities are expected to observe.
- Public entities are prohibited from applying particular conditions, but in practice this is not adhered to, resulting in several semi-official sets of particular conditions.

AB 92 vs FIDIC

The AB suite of contracts share many traits with FIDIC, however:

- Much less detailed
- More contractor friendly
- No “Engineer” concept
- Far fewer procedural rules and requirements regarding time limits, notifications and payments
- Less onerous force majeure regulation

PPP

(Private and Public Partnership)

The "newbie" in contracting with public entities which serves to reduce the inherent problems in public entities operating private law projects with private entities.



PPP - A New Player

- What is a PPP?
 - Public entity contracts a Contractor to act as Employer.
 - The engaged Employer is both responsible for the construction and for operation, maintenance and cost of construction after the final handing-over.
 - A recognized exemption for the public entity to the obligatory use of the AB system for contracting.
- PPP in practice
 - Three Standard Forms of Contract to secure a uniform and effective use.
 - The new black in public contracting.
 - Widely used with some carve-outs for maintenance in particular for special public entities such as police and military.

Flaws of PPP

- Problems getting use to PPP:
 - New responsibilities and roles (Operation and Maintenance).
 - Will incentivize to create long-lasting solutions with improved quality.
 - Heavy demands and greater liberty for the Employer.
- Is this the future when contracting with public entities?

Future Problems

- Restrictive system in a dynamic Industry.
 - Is it possible that the AB-system can meet the new standards for the state as a legal entity?
- Revision initiated March 2015 (three years).
- Oldie but goodie?

Thank you

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