

DENMARK

KEY FACTS AND FIGURES

Key Facts and Figures in Denmark						
Overview	Total procurement 33,800,000,000€		Procurement % GDP 14%		2013 GDP 252,938,900,000€	Contracting authorities 469
Procedures applied	Open 50%	Restricted 29%	Negotiated procedure with call 10% no call 3%		Competitive dialogue 0%	Direct award 9% Other 0%
Share of contract notices by buyer	National 16%		Regional/local 42%		Body governed by public law 22%	Other 20%
Contract type	Services 47%		Works 15%		Supplies 38%	Framework agreement 37%
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met
E-procurement adoption	E-notification Mandatory		E-access Voluntary		E-submission Partially mandatory	Uptake rate 6%
Perceived corruption	Corruption widespread in society			Corruption widespread in procurement		
	Businesses 10%		Individuals 20%		At national level 14%	At local/regional level 20%
TED indicators	Value of tenders 12,601,665,497€		Of total procurement 37%		# contract notices 2,694	# contract awards 2,062
Other indicators	Received single bid 7%		# days for decision 49.1		Price only criteria 27%	MEAT criteria 73%
	Won by foreign firms 4%		Related to EU funds 2%		Joint purchase 14%	Central purchasing Yes, SKI

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Denmark has a well-functioning procurement system that is quite advanced in its strategic dimension, as it includes green, SME, social, and to lesser extent innovation criteria. Procurement is conducted primarily at the local level, whereas the central government and the regions have a lower share of procurement. Each contracting authority is responsible for their own procurement, but they can make use of framework contracts managed by the central purchasing body SKI.

The Danish Competition and Consumer Authority plays an essential role in procurement, as it is responsible for supervision on the one hand, and for guidance and support on the other one. At the ministry level, the Agency for Modernisation is in charge of procurement policy and of the aggregation of procurement needs for government bodies. Denmark transposes EU Directives directly and maintains two sets of rules for national procurement.

Irregularities and corruption are negligible in Denmark, although the Danish Competition and Consumer Authority does point out that a relatively low level of public expenditure is subject to the competition regime.

DESCRIPTION OF FEATURES

Legal features of public procurement system

In the Danish legal system, the 2004 EU procurement Directives were transposed directly into national legislation as governmental order number 937 of 16 September 2004 concerning the procedures for the award of public works contracts, public supply contracts, and public services contracts, and governmental order number 936 of September 2004 concerning procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

On 19 November 2015, the new Contract Law (*Udbudsloven*) was passed, which implements the EU Directive 2014/24/EU. The new rules stipulate that if a supply and service contract has a clear cross-border interest the national threshold is EUR 67,000. Instead, if such a contract does not have a clear cross-border interest, no national threshold applies.

Public works below threshold are regulated by Act 1410/2007 (*Tilbudsloven*). For works, 3 to 4 offers must be collected above EUR 40,000 and the tender must be announced above EUR 400,000. If certain requirements are respected, 3 to 4 offers can be collected also for public works above EUR 400,000.

The Utilities Directive (2014/25/EU) and the Concession Directive (2014/23/EU) were transposed directly by the governmental order No. 1624 of December 2015 and governmental order No. 1625 of December 2015, respectively.

The remedies Directive has been transposed by law number 492 of 12 May 2010. The same complaints procedures apply for above and below threshold procurement. The review body in Denmark is the Complaints Board for Public Procurement, an independent administrative board of professional judges set up for hearing and settling procurement disputes. There is a fee of DKK 10,000 (approximately EUR 1,300) for submitting a complaint to the Complaints Board.

Institutional system

The Danish Competition and Consumer Authority plays the primary role in the Danish procurement system. Apart from its function as competition watchdog in public procurement markets, the Authority has a range of other responsibilities related to the functioning of the procurement system. For instance, it supports bidders through advice on the correct interpretation of procurement rules and guidance. Also, it hears complaints at an early stage and may bring cases in front of the Complaints Board, i.e. the review body. Decisions of the Complaints Board can be appealed before the ordinary courts within a period of eight weeks. Additionally, the Danish Competition and Consumer Authority performs compliance checks and regularly reports on violations. Finally, the Competition and Consumer Authority also operates the online portal for e-notification of public procurement.¹

The publicly-owned company *SKI* acts as the main central purchasing body. The Danish Ministry of Finance holds 55% of its shares, while 45% are in the hands of the Association of Local Authorities of Denmark. *SKI* aims at achieving better procurement results through the aggregation of demand. Its framework agreements are open on a voluntary basis to all levels of government. It manages approximately 50 framework agreements divided into 15 main product categories. Municipalities are *SKI*'s main clients.

The Modernisation Agency under the Ministry of Finance is responsible for procurement policy law, policy, monitoring, and compliance. It also acts as a central purchasing body, managing joint procurement on behalf of the government as part of the State Procurement Programme. Unlike *SKI*, procurement via the framework agreements of the Modernisation Agency is mandatory for state agencies. Other public bodies may choose to enrol in the State Procurement Programme.

Oversight of public procurement is also carried out by the Court of Auditors. The Court reports to the Parliament whether public funds have been spent in accordance with their policy objective including efficiency and effectiveness of public purchases. The work of the Court of Auditors is evaluated by external experts.

Key issues that have a bearing on administrative capacity

Human resources: A dedicated corporate buyer is appointed at each ministry and is responsible for managing procurement needs and overseeing quality. Furthermore, the corporate buyers form a forum that meets eight to ten times a year to coordinate and improve procurement.

SKI places great emphasis on the qualifications of its approximately 75 employees, which is reflected in the personal plan for development of every single employee. It aims at being an attractive employer in order to attract a highly skilled workforce.

Structures: The State Procurement Programme is supported by expert groups composed of selected procurement officials. Expert groups establish standards and criteria by product category in order to ensure maximum efficiency and the respect of user's needs.

The Council for Public-Private Cooperation was set up in 2013 in order to strengthen the cooperation between the public and the private sector in matters of procurement. The Council aims at increasing the knowledge base and improving the dialogue among stakeholders.

Furthermore, the Forum on Sustainable Procurement, a knowledge network of professional buyers in both the public and private sectors, and the Partnership for Green Public Procurement, a collaboration between municipalities, both support contracting authorities with respect to strategic public procurement.

The *IKA* association forms a network of public procurers and suppliers. It is primarily active in providing training and qualifications in procurement, as well as offering a platform for networking. *IKA* has set up *IKA* College in order to address specific training needs of procurers and suppliers.

Training: Certifications and training in procurement are offered by different organisations such as UNDP as well as the *IKA* association.

Training provided by *SKI* focuses, among other topics, on the implementation of green public procurement. It is offered for free in cooperation with the Environmental Protection Agency.

Systems/tools: The Danish Competition and Consumer Authority supports the public administration through the publication of guidance material and its advisory function. Until recently, it provided a telephone hotline for enquiries on public procurement matters, but this service has been replaced by a detailed walkthrough on its website called "bidding step by step".ⁱⁱ For instance, in 2014 it published guidance on the total cost of supply.

SKI offers an e-learning tool as training on green public procurement. This e-learning provides the basics on GPP in a session that can last from 15 min to one hour, depending on prior knowledge. The e-learning ends with a test on the material.

The national e-notification portal has developed a mobile app for suppliers in order to allow access to procurement markets on a smartphone.

E-procurement

Despite the absence of a central e-procurement strategy, Denmark has long been considered a leader in developing e-procurement capabilities. The most important actor in e-procurement is *SKI*, which runs the national e-procurement platform. It established electronic tendering as far back as the late 1990s and more recently

introduced an electronic dynamic purchasing system. Other platforms are available, but are not accessible from a single location.

E-notification is mandatory for all contracting authorities through the advertising portal¹. E-submission must be used by contracting authorities for at least 50% of their total procurement budget. E-invoicing takes an important role in the e-Government Strategy for 2011-2015, and is mandatory for all public bodies and suppliers for all types of purchases. As a result, the implementation of e-invoicing is close to 100%.ⁱⁱⁱ

Tracking of e-procurement data is not systematically monitored, and thus is scarce, making it difficult to assess overall progress. According to the estimates of a 2013 study on e-procurement take-up, the value of e-procurement in amounted to EUR 1.8 billion in 2011 or 5.5% take-up. Denmark ranks 10th in value and 9th in the level of take-up.^{iv}

Corruption

According to the Group of States against corruption (GRECO) Denmark has a strong framework for countering corruption, comprising appropriate legislation, law enforcement and judicial authorities.^v Corruption in public procurement is negligible, as it does not present itself as a systemic challenge.

Europe 2020 Agenda

Denmark launched a Strategy for Intelligent Public Procurement in 2013, in which it defines the goals it intends to pursue through public procurement. Efficiency, innovation, sustainability, and social responsibility are the objectives of Danish intelligent procurement.

Compared to EU peers, Denmark is advanced in its implementation of green public procurement. In fact, it started introducing GPP policies back in the 1990s and has developed extensive requirements and criteria. Additionally, Denmark has actively increased capacity in GPP and performs dissemination activities. Two platforms support the implementation of GPP and sustainable procurement, i.e. the Partnership for Green Public Procurement and the Forum for Sustainable Procurement. Denmark has signed up and effectively met the EU target of 50% share of green tendering procedures. It is now working on increasing the share of GPP even further.^{vi}

In an effort to promote responsible procurement, it has introduced a “The Responsible Purchaser” a web tool that includes several dimensions such as environment, social, and labour aspects, as well as ethical considerations in production processes of suppliers such as human and labour rights, environmental protection, and anti-corruption.^{vii}

Social and SME procurement are also part of Denmark’s strategic goals. *SKI* has set up a specific policy for SME inclusion. When designing the tenders, it analyses the supply structure relevant to the contract and identifies the role SMEs could play in the tender. Subsequently, the tender is conceived in such a way that it facilitates the participation of SMEs. In addition to that, *SKI* regularly organises seminars for SMEs on how to participate to public procurement. Along the same lines, the procurement portal provides an online feature that helps SMEs in findings consortium partners for joint bids.

Social aspects will be increasingly a focus of public procurement. Since 2013 a “comply or explain” principle has been introduced with regards to the use of social clauses by contracting authorities. The Competition and Consumer Authority prepared

¹ <http://udbud.dk>

guidance material on the legal framework related to the use of social clauses, particularly with respect to training and internships.^{vi}

The Council for Public-Private Cooperation finds that the Danish experience is still limited with only 12% of surveyed public buyers having carried out innovation projects. Denmark collaborates with other Nordic countries in promoting innovation through standardisation and procurement, but compared to Sweden, it makes less use of functional requirements for innovation. Also public-private innovation partnerships could be strengthened as only a few are implemented.^{viii}

Irregularities and findings of national Audit Authorities

The Danish Competition and Consumer Authority monitors the status of competition within the public administration on a yearly basis. One of its main findings with respect to public procurement is that contracting authorities have the tendency to keep services in-house that could potentially be contracted out.

Specifically, the findings in 2013 denote that out of some EUR 52 billion worth of services that were suitable for competitive tendering, only around EUR 13 billion were contracted out. In other words, some three quarters of services that could have been procured externally were not contracted out.^{ix}

On the other hand, the Danish procurement system performs very well with respect to compliance and efficiency. In its 2013 annual report Court of Auditors only refers to five instances in which irregularities with public contracts were found or are under investigation.^x The Court of Auditors audited 20 Ministries as part of its mandate to assure the regularity of public finance. For its annual statement, the Court of Auditors reviews over 200 processes; observations are made in about half of the cases.^{xi}

The Complaint Board for Public Procurement found a remarkable decrease in the number of complaints received in recent years: from 182 in 2010 to 107 in 2013. Likely the change in regulatory framework had an impact, as the fee for appealing to the Board rose considerably during this period.^{xii}

An analysis by the Council of Public-Private Cooperation uncovers that Denmark has a particularly high level of tender annulation compared to EU peers. In fact, 885 out of 5,555 published EU-level tenders were cancelled, i.e. a 16% cancellation rate. This rate has been relatively stable over a period of several years. In contrast, the average EU cancellation rates lie between 5 and 10%.^{xiii}

Outlook

After a series of consultations, the Danish Parliament is moving forward with a new Public Procurement Act transcribing the 2014 Directives and making a number of additional reforms. In addition, the government will monitor procurement during the course of 2015 and take stock of developments and initiatives, in order to enter into an agreement with the municipalities on concrete targets for municipal procurement. This agreement is planned for 2016.^{xiv}

Furthermore, a committee has been established with the purpose to work out a strategy for e-Procurement. The first draft of the strategy is expected by mid-summer 2015. Denmark's ambition is to have legislation ready ahead of the deadline by 2016.ⁱⁱⁱ

The Danish Strategy for Intelligent Public Procurement focuses on support to administrative capacity as a means to achieve its goals.^{vi} Skills building, guidance materials, dissemination of best practices, as well as tools are part of the strategy, as public buyers are demanding greater support and guidance in strategic procurement.

ANALYSIS

Strengths

Political will to increase competition in public procurement is yielding results. The Competition Authority has repeatedly pointed at the low level expenditure subject to competition and called for its increase, notably in the field of public services. Furthermore, a circular by the Ministry of Finance (no. 2 of 13 January 2010) establishes that public bodies are obliged to procure, unless they can prove that the particular job is not offered on the market or that procuring would result in disproportionate costs.^{xv}

Thus, Denmark is making steady progress in increasing the level of externally procured public service contracts, particularly at ministry level. Since 2009 the central government increased the level of contracted out services by 3%, while the increase for municipalities was 2%. Furthermore, in order to facilitate public procurement and strengthen competition, the complaints system was reviewed and simplified.^{xvi}

Denmark is very successful at including SMEs in its procurement process. A study conducted by the Competition and Consumer Authority indicates that SMEs participate in two thirds of calls for tenders and are successful in about half of their bids.^{xvii} While *SKI* only covers a fraction of the procurement market, its practices with regards to SME procurement are well-received, as the Competition and Consumer Authority recommends knowledge of the market structure as a way to enhance SME participation in procurement.

Weaknesses

Even though the Danish procurement system is well-functioning, Denmark may not reap the full benefits of its procurement market due to the fact that it has a relatively low level of procurement expenditure. In 2011, the share of procurement expenditure was 23.3% of total government expenditure; in contrast, the OECD average was 29%.^{xviii} This is particularly true for public services, which contracting authorities often chose to provide in house instead of contracting out via procurement processes. However, in-house public services are excluded from a competition regime and are therefore likely to be more expensive. As a result, Denmark may experience efficiency losses due to unexploited potential of more competition. In addition, a greater share of procured expenditure would open up more business opportunities to private companies and in turn foster the private sector's ability to innovate and become more productive. In this sense, the Danish economy is foregoing potential welfare as a consequence of its low level of procurement for public services.

Efficiency losses may also result from the fragmented nature of procurement and the limited amount of centralisation. *SKI's* turnover based on its framework agreements amounted to only 4% of total procurement, indicating that there is potential for further centralisation and aggregation. In fact, *SKI's* goal is to conduct 10% of total procurement under its auspices.^{xix}

Beyond efficiency losses, the underlying causes for the limited procurement in public services shed some light on other shortcomings in the procurement system. In fact, the public procurement legislation and the complaint system are perceived as a barrier by public buyers according to a 2012 survey. This indicates that there is potential for simplification of the legal framework and for the professionalisation of procurement.^{xvi}

Similarly, the high rate of cancelled tenders indicates a series of weaknesses. One of the reasons for withdrawing the tenders appears to be that contracting authorities have unrealistic expectations about what is offered on the market. This signals a lack of dialogue between private sector and public authorities.^{xiii}

While overall a frontrunner in strategic public procurement, Denmark could strengthen innovation procurement. Despite high expectations among stakeholders, implementation shows a nuanced picture and in fact is relatively confined. Furthermore, Denmark has only implemented half of the instruments for promoting innovation through procurement as its more advanced peers such as Sweden. Not least, the lack of comprehensive data makes it difficult to monitor and ultimately draw conclusions on the effects of innovation procurement.^{viii}

Recommendations

- **Procure more:** Denmark's low level of procurement expenditure prevents it from tapping into the full potential of the market.
 - Allow in-house public service contracts to take part in competition in the open market.
 - Increase the share of procured expenditure in order to provide greater possibilities and opportunities for private companies to foster competition.
- **Let the pros handle it:** Participation in large, national framework contracts negotiated by *SKI* falls well short of expectations, which in turn weakens its bargaining power on the market.
 - Encourage contracting authorities to make greater use of framework contracts made available by *SKI*.
- **Complex legal framework:** The legislation on public procurement and the complaint system are generally considered too complex and burdensome.
 - Reform the procurement legislative framework to streamline and simplify compliance.
 - Increase guidance and support to contracting authorities through the Danish Competition and Consumer Authority.
- **Market knowledge:** A significant number of contracts are withdrawn before they are awarded. This may be due to the lack of knowledge on the part of contracting authorities regarding what the market has to offer.
 - Strengthen business skills through targeted trainings and on market research and dialogue with the private sector.

- ⁱ Danish competition and consumer authority, available at: www.udbud.dk
- ⁱⁱ Danish competition and consumer authority, available at: www.kfst.dk/Offentlig-konkurrence/Udbudsprocessen-trin-for-trin
- ⁱⁱⁱ European Commission (2015), DG MARKT, E-procurement uptake
- ^{iv} European Commission (2013), DG MARKT, E-procurement state of play report
- ^v Group of States against corruption (GRECO) (2005), Second evaluation round report
- ^{vi} Regeringen (Government) (2013), *Strategi for intelligent offentligt indkøb* (Strategy for smart procurement)
- ^{vii} *Den Ansvarlige Indkøber* (Responsible purchasing), available at: <http://csr-indkob.dk/>
- ^{viii} *Radet for Offentlig-Privat Samarbejde* (Council for Public-Private Cooperation) (2013), *Innovationsfremmende indkøb* (Promotion of innovation in procurement)
- ^{ix} Danish Competition and Consumer Authority (2014), Executive summary of the 2014 review of competition in publicly provided services
- ^x *Rigsrevisionen* (National Audit office) (2014), *Beretning til Statsrevisorerne om revisionen af statsregnskabet for 2013* (Report of the state accounts for 2013)
- ^{xi} *Rigsrevisionen* (National Audit office) (2014), *Rigsrevisionens virksomhed i 2013* (Annual report)
- ^{xii} *Klagenævnet for Udbud* (Review Board), *Årsberetning 2013* (Annual Report 2013)
- ^{xiii} *Rådet for Offentlig-Privat Samarbejde* (Council for Public-Private Cooperation) (2014), *Analyse af annullationer af EU-udbud* (Analysis of cancellation of EU procurement)
- ^{xiv} *Moderniseringsstyrelsen* (Agency for Modernisation Ministry of Finance) (2013), *Faktaark: Strategi for intelligent offentligt indkøb* (Fact Sheet: Strategy for smart procurement)
- ^{xv} *Konkurrence- og Forbrugerstyrelsen*, *Status for offentlig konkurrence* (Competition and Consumer Authority, Status of public competition) (2014)
- ^{xvi} Danish Competition and Consumer Authority (2014), Executive summary of the 2014 review of competition in publicly provided services
- ^{xvii} Danish Competition and Consumer Authority (2013), SME-participation in public procurement: Market study
- ^{xviii} OECD (2103), Government at a Glance, Denmark Factsheet
- ^{xix} Available at: <http://www.ski.dk/viden/Sider/Centraliseret-offentligt-indkøb.aspx>