



# Standard Forms of Contract

What rules are usual when constructing for public entities?

7<sup>th</sup> of April 2017 AIJA Lausanne

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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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