

Challenges for NSB's and Public Authorities when referencing standards in public procurement.

- Zoom meeting.
 - September 10th 2020 10.30 to 12.30



Practicalities when meeting in Zoom

- Keep the microphone on MUTE when not speaking
- Use "hands up" function if more people have questions at the same time.
- Presentations to be sent out afterwards
- If practical questions to meeting please ask now.







10.30 Welcome and round table on news from participants

• Short status from countries on the work of implementing Article 42.







- Representatives from **12** central public authorities as well as from **19** NSB's (National standardisation bodies)
 - + Observers



Network participants

Country	Public proc. representative	NSB representative
Austria	YES	YES
Belgium	YES	YES
Croatia	YES	YES
Cyprus	YES	YES
Denmark	YES	YES
England	no	YES
Estonia	no	YES
Finland	no	YES
Germany	YES	YES
Iceland	no	YES
Latvia	YES	YES
Lithuania	YES	YES
Luxembourg	no	YES
Malta	YES	no
Norway	no	YES
Poland	no	YES
Romania	YES	YES
Spain	YES	YES
Sweden	YES	YES
Switzerland	no	YES
New representativ	as (green) and existing representatives (b	lue

Short status from countries on the work on implementing Article 42.

New representatives (green) and existing representatives (blue)



10.30	Welcome and round table on news from participants
10.40	Comments to prior minutes of the meeting on May 11 .2020 and summarizing some challenges in referencing standards.
10.50	Latest news on further professionalization of public procurement in Europe.
11.05	Latest news on work done in CENCENELEC on standardisation
11.20	Chall. 1: How to handle "Or equivalent" material from bidders
11.35	Chall. 2: Ensuring documentation and proof of conformity in procurement documents
11.50	Chall. 3: The challenge on payment for standards when referencing in public tenders
12.00	Sustainable procurement
12.10	Any other business.
12.25	Next meeting/meetings.



Presenters

Welcome to todays presenters:

<u>The European Commission – DG-GROW</u>

Nikolaos Petras, Legal and Policy officer

CENCENELEC

Christina Thorngreen, Project manager

DanSense

Martin Ingemann, Legal advisor, public procurement Søren Jensen, Director, DanSense

10.40

Comments to prior minutes of meeting on May 11.2020 and summarizing some challenges in referencing standards.

Søren Jensen, DanSense

o Comments.

Our Summarizing Challenges in Article 42.3 in short.



Comments since last meeting.

Who are the major stakeholders addressed in this network?

- Central public procurement authorities and NSB's (standardisation bodies).
- o **Observers** are allowed.
- o There is a limitation on **100 participants**. Later restrictions on number of national representatives might be necessary, to ensure all countries represented.
- We do not interpret the directive, only present practical and useful solutions to all, and offer possibility of joint discussion.



Comments since last meeting.

Where do we learn more about referencing standards in PP?

- o The European guide for referencing standards in public procurement
- A first specific guide in the construction area on "Sustainable building renovation)
- o **EU websites** (not specifically on ref to standards but projects in general)
- And with DanSense as initial help;
 - o In cross country webinars for national experts.
 - National workshops / Webinars.
 - o Through guidance in national specific and challenging public tenders.

DanSense primary goal is to **assist** all countries in learning how to reference standards according to Article 42, to reduce total cost in public procurement.

The overall aim is **conducting first trainings and assisting** countries to be able to continue training themselves.



Comments.

o No comments received on the draft minutes on 11th May



Specific challenges met;

- o like e.g. "or equivalent", or "price for standards" to be addressed.
 - o Prepared for this meeting
- A need for more specific training. Not only in the overall guide.
 - Prepared, to be presented. First "Guide on sustainable building renovation."
- More focus on the importance of competences and recognition of public procurement.
 - o for this meeting





Summarizing point from last meeting.

Annual EU budget in public procurement:

€ 2 trillion, 13,3 % of GDP per year.

Including:

250.000 public entities in Europe.

Savings:

If 1 % saved = € 20 Billion per year.

DanSense vision for Professionalized procurement with standards:

5-10 % saved plus introducing sustainable procurement.



Article 42.3 in Directive 2014/24/EU

Summary.

For technical specifications, Article 42.3 states that

"the technical specifications shall be formulated in one of the following ways".

- There are four ways.
- Three of the ways include referencing standards.
- If referencing standards not known = Art. 42.3(a) is the only option.

This is the biggest challenge.



Legal background for referencing standards

Directive 2014/24/EU of the European Parliament and of the council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC explicitly allows contracting authorities to reference standards in technical specifications in the procurement process

- Article 42 "Technical specification"

42.3

 "....Without prejudice to mandatory national technical rules, to the extent that they are compatible with Union law, the technical specifications shall be formulated in one of the following ways"



42.3.(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

Mostly used

Legal background for referencing standards

Knowledge as to the use of standards is required.

42.3(b) "by reference to technical specifications and, in order of preference, to national standards transposing European standards, European Technical Assessments, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or - when any of those do not exist - national standards, national technical approvals or national technical specifications relating to the control of the works and use of the supplies; each ence shall be accompanied by the words 'or equivalent';"



- 42.3(c) in terms of performant functional requirements as referred to in point (a), with reference to the chnical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements
- **42.3(d)** by reference to the technical specifications referred to in **point** (b) for certain characteristics, and ference to the performance or functional requirements referred to in point (a) for other characteristics.

If you don't understand (b) you cannot use (c) or (d)





Referencing standards

Article 42.3

Art 42.(b): Order of preference

This list is exhaustive

If not mentioned, then not included.

In order of preference:

A: National standards transposing European standards

B: European Technical Assessments

C: Common technical specifications

D: International standards

E: Other technical reference systems established by the European standardisation bodies,

or if the above does not exist

F: National standards

G: National Technical approvals

H: National Technical specifications

Each reference accompanied by the words "or equivalent".





Some effects from not knowing or referencing standards in Art. 42.3.b (-d)

8

Not being able to reference standards reduces possibilities in e.g.:

Article 43 "Labels"

- Related e.g. to transparency, documentation and proof of conformity

Article 44 "Test reports, certification and other means of proof"

 Related to e.g. documentation, proof of conformity, measurement and transparency.

Article 60 "Means of Proof"

- Related to e.g. third party documentation in a standardized way.

Article 62 "Quality assurance standards and environmental management standards"

- Related to e.g. correct use and documentation of certificates, better assessing of "other evidence", and requirements setting.

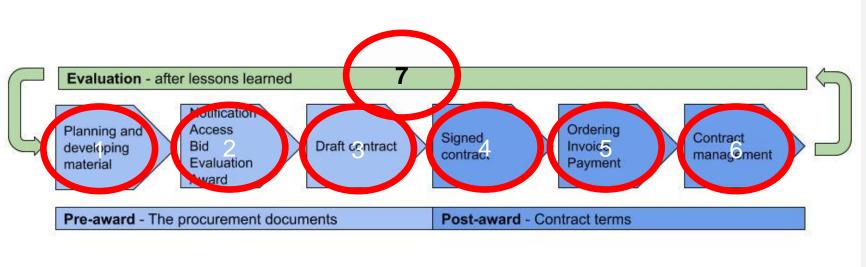


DAN SENSE

Public procurement

End-to-end procurement

Where standards are relevant.

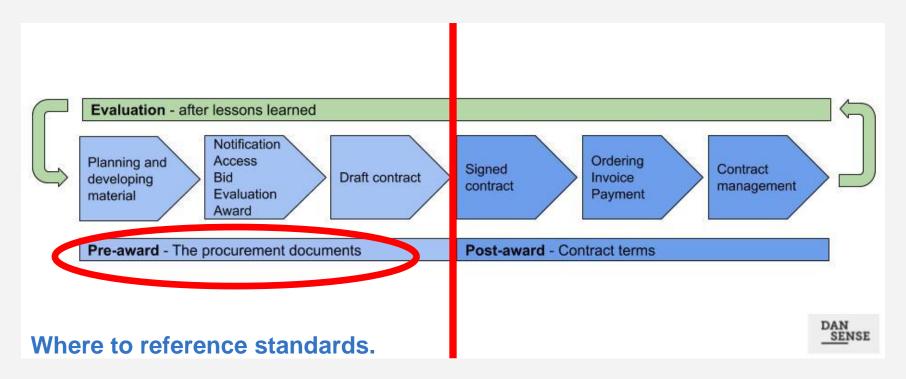


- 1: Describing technical specifications
- 2: Assessment and comparability
- 3: Measurement
- 4: Measurement
- 5: Audit, proof of conformity, control
- 6: Contract management and compliance
- 7: Evaluation and control



Public procurement

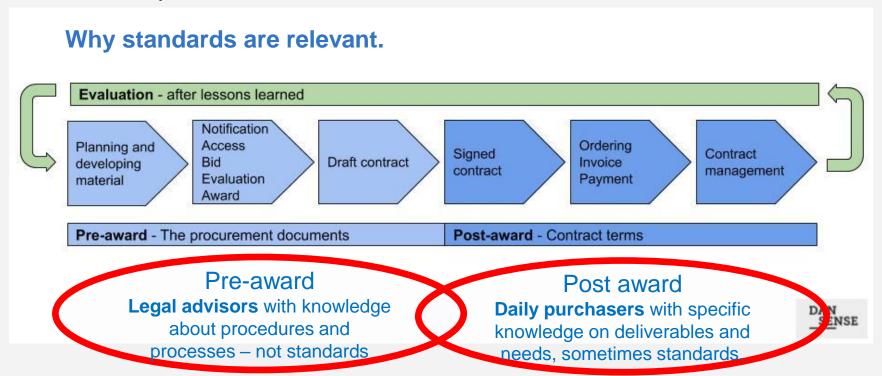
End-to-end procurement





Public procurement

End-to-end procurement



Why? E.g.:

To Reduce transaction costs

To Improve documentation

To Increase transparency:

To increasing competition:

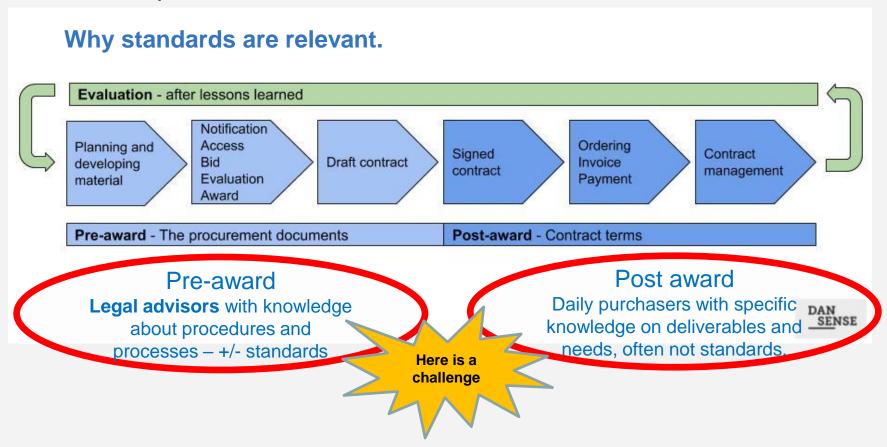
To ensure Equal treatment:

- Easier to describe procurement documents.
- Comparability and measurement. Audit
- Commonly agreed "language"
- European standards are the same for all
- Same arguments as above.



Public procurement

End-to-end procurement

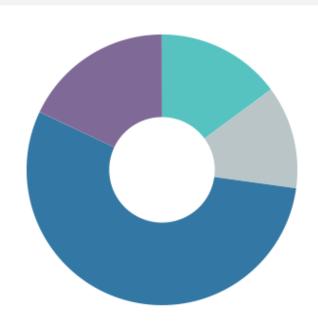




Where did you learn about referencing standards?

https://www.cencenelec.eu/news/brief_news/Pages/TN-2019-038.aspx





Total sprog: Indeholder null. Svar status: Gennemført

- National Standardisation bodies
- Consultants

14,9% We have used them earlier in similar tenders

Public authorities

54,8% 18,0%

423

3



10.50

Latest news on further professionalization of public procurement in Europe.

Nikolaos Petras, European Commission - DG Grow.

- o Procuracomp.eu
- **Output** Output Output







11.05

Latest news on work done in CENCENELEC on standardisation

Christina Thorngreen, Project manager. CENCENELEC

• New standards developed.



European standardisation

- CEN
- CENELEC





11.20 Challenge number 1:

How to handle "Or equivalent" material from bidders

Martin Ingemann, DanSense.





Reference to a standard in technical specifications

- Dir. 2014/24/EU, art. 42 (3,b) "each reference to a standard shall be accompanied by the words "or equivalent".
 - Reference to a standard <u>shall always</u> be accompanied by the words "or equivalent"
- What does that mean?
 - The contracting authority shall take different solution responses into consideration from tenderers who believes that their solution complies with the technical specifications
 - The contracting authority can not reject offers simply because the tenderer hasn't, via documentation, directly referred to specified standard,
 - The contracting authority is obligated to consider any given solution in accordance with the technical specification described.



Compliance with the technical specification

Reference to Dir. 2014/24/EU, art. 44 (1) and (2)

Test rapports or certificates

The Contracting authorities can always require documentation via

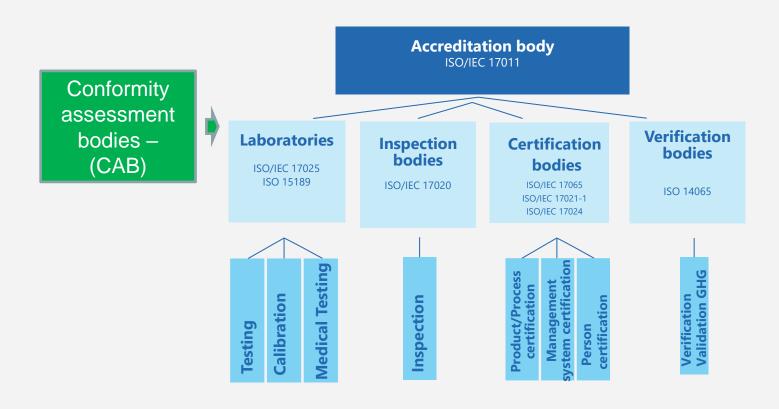
- test report from a conformity assessment body or
- a certificate issued by such a body as means of proof of conformity with requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.
- Where contracting authorities require the submission of certificates drawn up by a specific conformity assessment body, certificates from equivalent other conformity assessment bodies shall also be accepted by the contracting authorities.

Other appropriate means of proof

- Technical dossier if the tenderer had no access to the certificates or test reports or no
 possibility of obtaining them within the relevant time limits, provided that the lack of access is
 not attributable to the economic operator concerned and
- It is the tenderer that must justify compliance with the technical specifications. The
 dokumentation shall prove that the works, supplies or services provided meet the
 requirements or criteria set out in the technical specifications, the award criteria or the
 contract performance conditions.



International standards structure ensuring proof of conformity with test reports and certificates





Compliance with the technical specifications

The "Danish model" cf. the Danish Competition and Consumer Authority

– Situation one:

- The first situation is where the tenderer does not have the opportunity to obtain the required **test reports** or **certificates** within the applicable deadline for reasons that cannot be attributed to the tenderer in question.
 - Always a specific assessment

- Situation two:

- The second situation is where the tenderer does not have the required test reports or certificates, even though it has been possible to obtain it within the applicable deadline.
 - One Hour rule



Example

In a public tender the contracting entity require the use of the EU Ecolabel "or equivalent".

- Almost 500 so-called ecolabels exists, and most of them are not equivalent to the EU Ecolabel.
- By referencing an international standard EN ISO 14024:2018
 Ecolabelling Type 1 Eco-labelling, which is basis for the EU
 Ecolabel, the number of equivalent labels are already reduced to approximatelly 25.
- Other kind of documentation shall also be accepted, provided proof of conformity exist.





Conclusion

- Standards KEEPS YOUR SPECIFICATIONS SIMPLE
 - Requirements for quality specifying services, works and supplies can easily be described

- Do not be afraid of the phrase "or equivalent"
 - Used correctly there will be no disproportionate waste of time comparing documentation for the contracting authority.

- NOTICE

Similar requirements and conditions regarding labels cf. Dir. 2014/24/EU, art.
 43



11.35 Challenge number 2:

Ensuring documentation and "proof of conformity" in public procurement documents

Søren Jensen, DanSense



Compliance with the technical specification

Reference to Dir. 2014/24/EU, art. 44 (1), (2), and (3)

Test rapports or certificates

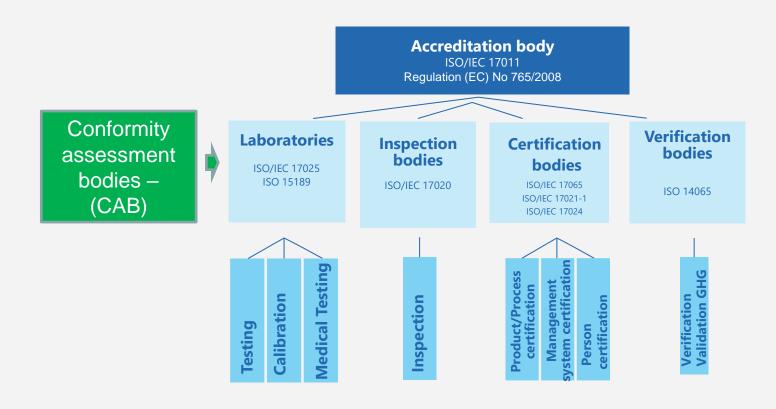
Contracting authorities may require that economic operators provide a test report from a conformity assessment body or a certificate issued by such a body as means of proof of conformity with requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

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 - Where contracting authorities require the submission of certificates drawn up by a specific conformity assessment body, certificates from equivalent other conformity assessment bodies shall also be accepted by the contracting authorities.
 - For the purpose of this paragraph a conformity assessment body spall be a body that
 performs conformity assessment activities including calibration, testing, certification
 and inspection accredited in accordance with Regulation (EC) No 765/2008 of the
 European Parliament and of the Council (1).



International standards structure ensuring proof of conformity with test reports and certificates





Proof of conformity



Summarizing

- When referencing standards in Article 42.3 equally important is Article 44 when requiring test reports, certificates and other means of proof, and when comparing "or equivalent".
- Any standard mentioned in technical specifications may easily be controlled or assessed by objective third parties.
- Proof of conformity may be the strongest and best controlled tool in standardisation, and when used correctly in public procurement.
- It can:
 - Focus the correct product, service or construction as requested.
 - Ensure deliverables on time or if not, documenting who is responsible.
 - Provide the needed proof of assessment for any contractual disputes based on standards.



Example on use of certificates

And ensuring conformity

Content of a certificate:

- Name and address of certification body
- The date certification is granted
- The name and address of the client
- The scope of certification (product, process, service)
- Expiry date of certification
- Any other information required by the certification scheme. (Additional information)
- A signature (name and title)
- Formal certification documentation





11.50 Challenge 3:

The challenge on payment for standards when referencing them in public tenders.

Søren Jensen, DanSense



Article 53.1

Electronic availability of procurement documents

"1. Contracting authorities shall by <u>electronic</u> means offer <u>unrestricted</u> and <u>full direct access free of charge to the procurement documents</u> from the date of publication of a notice in accordance with Article 51 or the date on which an invitation to confirm interest was sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which the procurement documents are accessible."

When referencing standards, they are to be provided free of charge.



Article 53.1

Electronic availability of procurement documents

Ongoing discussion

Who shall pay for standards?
 Contracting authority when tendering.

Contractor when contracting.

– Why are they not for free?
It's a commercial product, like e.g. milk

They are too expensive!
In relation to?

<u>The lowest</u> threshold in a public tender is for sub-central contracting authorities on all other service contracts, all design contests, subsidised service contracts, all supplies contracts is €214,000. Price for standards no more than at most € 1 - 2,000, depending...



Article 53.1

Electronic availability of procurement documents

Ongoing discussion

 Does Contracting authority have to pay full price for standards in the period of open tender?

Answer

Not necessarily.

– Does bidders have to buy standards?

Article 53.1 – NO. Access for free.

Only contractor shall document compliance with required standards.

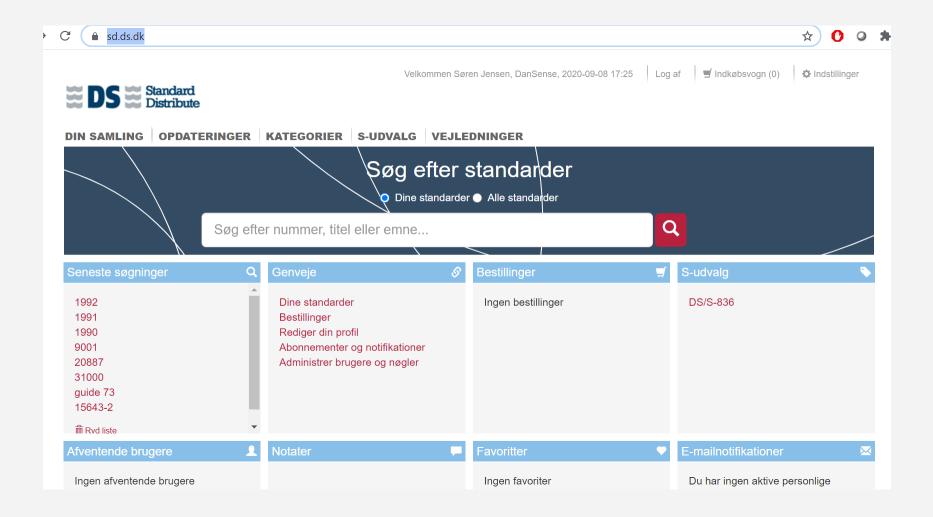
 How can we grant access and save money at the same time?

Most National Standardisation Bodies can provide access to relevant standards, and normally to a much lower price for a short "rental" period.

If doubt, ask DanSense.



Example from Denmark





12.00 Sustainable procurement

- o **Nikolaos Petras**, European Commission DG Grow
 - **Output** Making socially responsible public procurement work
- o Søren Jensen, DanSense
 - **Sustainable building renovation.**











First sector specific guide:

Sustainable building renovation



To be published app. September 15th, 2020.

First specific sector guide in training of public entities in referencing standards and environmental requirements in public procurement



First sector specific guide:

Sustainable building renovation



Focusing:

- Standardisation aspects, and
- Environmental aspects in
- Building renovation and demolition projects.
- can also assist when considering construction of new buildings.

Written primarily as:

- Guidance for contracting authorities.
- But useful for contractors too.



Reason for developing this guide

- "This guide is developed to provide a better understanding and guidance on how to innovatively reference standards and environmental requirements in the area of construction works when planning public tenders on sustainable building renovation including considerations on demolition prior to renovation."
- The construction sector in the EU provides 18 million jobs and contribute to about 9 % of EU's GDP. Buildings account for approximately 40 % of the energy consumption and produces more than one third of the global greenhouse gasses.
- The guide combines latest news on procurement and sustainability, with terms and terminology used practically when demonstration how to integrate standardisation aspects and sustainability aspects in the procurement documents.

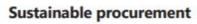




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12.10

Any other business.

- o Training nationally in referencing standards
- o New specific guides to be developed.
- Other issues?



Training nationally in referencing standards

Annual EU budget in public procurement:

€ 2 trillion, 13,3 % of GDP

Including:

250.000 public entities.

Training nationally is needed!

Savings:

1 % = € 20 Billion.

DanSense vision for Professionalized procurement with standards:

5-10 % saved plus introducing sustainable procurement.



How we can help you.

A: Guide for referencing standards in public procurement in Europe

1: Experts training cross-country*

7 hours webinars

4x2 hours webinars

(see information and registration here)

Gediminas

Advantage: Inclusion of experiences from other countries too. High level of expertise, more focus on overall challenges. Price per person.

2 National webinars (or workshops)*

Same principle as above, with 7 hours or 4x2 hour training, but with extra focus on national challenges in e.g. strategy, standards, environmental aspects, and possible business cases.

Advantage: Focusing more directly on national needs and solutions and include possibility for extra training of a national public procurement authority or NSB for further national training. Price per workshop/webinar.





How we can help you.

A: Guide for referencing standards in public procurement in Europe

3: Specific advising in selected public tenders*

Specific assistance/guidance/learning in:

Public tenders that went horrible wrong

 Lessons to learn. Could anything have been done otherwise if referencing standards?

Planning of new public tenders – direct advices.

- Full and direct guidance in specific tenders, and development of procurement documents.
- Which standards might be relevant in the procurement documents to ensure best outcome and reduced transaction costs.
- First tests for own learning and implementation.

Combining sustainability requirements and standards

• Integrating social, climate, and environmental requirements with standards as documentation and proof of conformity with the requirements.





Next training sessions.

A: Guide for referencing standards in public procurement in Europe

1. Expert training, cross countries

Full day training webinar on 7 hours:

Tuesday	September 15 th	09.30-16.30. (Denmark)
•Wednesday	September 16 th	09.30-16.30.
•Wednesday	September 30 th	09.30-16.30.
Thursday	October 01st	09.30-16.30.

Four times 2-hour webinars:

As long as lessons are followed in correct order from 1 to 4, you can pick the time that fits you best. Training is in Zoom:

9						
Date	Tue. 17.09	Tue. 17.09	Thu. 24.09	Thu. 24.09	Thu. 24.09	Mon. 28.09
Time	09.30-11.30	12.30-14.30	09.30-11.30	12.30-14.30	15.00-17.00	09.30-11.30
Lesson 1	(x)	(x)	(x)			
Lesson 2				(x)	(x)	(x)
Date	Mon. 28.09	Mon 28.09	Wed. 02.10	Wed 02.10	Wed 02.10	Mon 05.10
Time	12.30-14.30	15.00-17.00	09.30-11.30	12.30-14.30	15.00-17.00	09.30-11.30
Lesson 3	(x)	(x)	(x)			
Lesson 4				(x)	(x)	(x)

Read and register here: http://dansense.dk/referencing-standards-in-public-procurement





Next training sessions.

B: Sector specific guide on sustainable building renovation

1. Expert training, cross countries

Full day training webinar on 7 hours:

•Tuesday October 6th 09.30-16.30. (Denmark)

•Wednesday October 21st 09.30-16.30. •Thursday October 22nd 09.30-16.30.

Four times 2-hour webinars:

As long as lessons are followed in correct order from 1 to 4, you can pick the time that fits you best. Training is in Zoom:

Date	Thu. 08.10	Thu. 08.10	Mon. 19.10	Mon. 19.10	Mon. 19.10	Fri. 23.10
Time	09.30-11.30	12.30-14.30	09.30-11.30	12.30-14.30	15.00-17.00	09.30-11.30
Lesson 1	(x)	(x)	(x)			
Lesson 2				(x)	(x)	(x)
Date	Fri. 23.10	Mon 26.10	Mon. 26.10	Mon 26.10	Thu 29.10	Thu 29.10
Time	12.30-14.30	09.30-11.30	12.30-14.30	15.00-17.00	09.30-11.30	12.30-14.30
Lesson 3	(x)	(x)	(x)			
Lesson 4				(x)	(x)	(x)

Read and register here: http://dansense.dk/building-renovation-and-use-of-environmental-requirements-and-standards-in-procudocuments





Training in:

A: Guide for referencing standards in public procurement in Europe

B: Sector specific guide on sustainable building renovation

2. National webinars (or workshops)

On "Guide for referencing standards in public procurement in Europe" and on "Sustainable building renovation".

Including:

 Strategy for webinars/workshops including number of workshops in English, training nationally and own continuation – collaboration.

3: Specific advising in selected public tenders etc.

Necessary to have good business cases for later national training or specific assistance.

Contact us for an especially good offer on first business case!





12.10

Any other business.

New specific guides to be developed.

o Ideas:

- o Healthcare
- Social services
- Textiles
- o Waste management
- o Building services

Where is the shoe aching right now?

Medical devices?



12.25

Next meeting and next challenges.

- Proposals on topics for next agenda:
 - The Austrian approach. experiences made beneficial for all.
 - o EU competitive authority- invitation
 - o Other?



Presentation of DanSense

DanSense. Consulting engineers.

We specialise in:



Environmental requirements.

Referencing of standards.

Environmental Aspects and impacts

Sustainable development Management systems, ISO 14001 etc. Specific environmental aspects.

Søren Jensen: MSc. Env. Mgm. "Master in Environmental Management". Owner of DanSense. Experience: 33 years in the public and private sector and in a fund.

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