

# Competitive or collaborative construction procurement

A story of public procurement

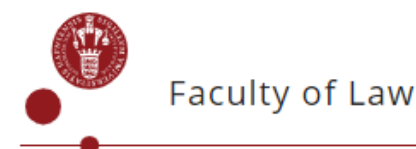
Torkil Schrøder-Hansen  
Faculty of Law  
April 23, 2025

UNIVERSITY OF COPENHAGEN



## The project is industry based

- Interdisciplinary study
  - 2/3 social sciences and 1/3 legal doctrinal
  - Text analysis of 993 contract notices, 332 ITT's from 1/1-16-31/7-23, 33 observations of negotiation or dialogue meetings and 9 interviews March-April 2025
  - The thesis is a monograph
- Financed 50 % by Realdania, UCPH Law Faculty and DI Byggeri 25 % each
  - Followed by a group of 8 NGO stakeholders + UCPH
  - Timeline: 1/10-22 till 30-9-26
  - 3 days at UCPH and 2 days at DI Byggeri



## Main research questions

- How does the negotiation strategy affect the flexible procedures in the Danish construction sector and how can negotiation strategy add more value?
- Where are the public procurement rules hindering value creation?



# A simple theoretical negotiation framework



Distributive Negotiations	Integrative Negotiations
<ul style="list-style-type: none"> <li>Win-lose</li> <li>Withholding information</li> <li>Position-based</li> <li>Focus on content - less on relationships</li> <li>Focus on formalities</li> <li>Shorter time frames</li> <li>Closed or argumentative questions aimed at changing the other party's mind</li> <li>Focus on own gain</li> </ul>	<ul style="list-style-type: none"> <li>Win-win</li> <li>Sharing information</li> <li>Needs and interests-based</li> <li>Focus on both relationships and content</li> <li>Informal settings to build relationships</li> <li>Longer meetings with parties</li> <li>Open and curious questions aimed at understanding the other party's perspective</li> <li>Focus on creating value for both parties</li> </ul>

## Main preliminary findings text – CN and ITT's

- Hardly anything about the negotiations in the contract notice
- 72.8 reserves right to award contract without negotiations in procedures with negotiation
- Options in 41,7 %
- Minimum deadlines mainly used
- 97 % price + quality award criteria
- Average est. contract value 35 million €
- Mainly competition with 3-5 bidders
- 28,5 % reserves right to limit competitors after initial tender
- ITT's coded for 11 parameters for information on negotiations – none had all 11
- Limited information about the negotiations
- Very high use of CTRL C – CTRL V – same purpose, same agenda, meeting time etc.
- Main purpose is strengthening the bids + clarifying the tender material
- Often short deadlines and multiple pages of documentation from the bidders
- Design and build v. build contracts 50/50
- 1/3 pays tender fees

## Main preliminary findings observations

- Analysed through 8 main parameters with subcategories
- Moments of integrative negotiations
- Most meetings were under 2 hours and without breaks
- Meetings lasting more than 3 hours proceeded at a slower pace
- The introduction was formal, quick, and with little focus on relationships
- Breaks provided opportunities for new dynamics
- Average 7 clients + reps and 5 bidders but speaking time is primarily distributed among less than 4 people
- When discussing interfaces, risk profiles, and construction site logistics, the negotiations became integrative
- Unilateral evaluation of bids
- Open questions and summaries create a common ground for ideas
- Rarely any admissions regarding legal, economic, or expensive solutions
- Often closed or argumentative questions

## Main preliminary findings interviews

- *"Procedure with clarification"* – no negotiation as such
- Negotiation seems to imply a question of money in the informant's mind
- Focus is on the project – but most mention the relation as being the second most important point
- Goal for tenderers is to win the contract
- Goal for the employers and consultants is to get the "best bids" – and at times get the bids to be equal
- The rules are not necessarily seen as a barrier for the negotiations
- Lawyers tend to skew the negotiations to the formal side
- The procedures requires much preparation
- High transaction cost but better than the alternative
- Some claim results equals or outperforms efforts – often tenderers claims the opposite
- Much analysis to be done...

## Sum up of findings

- If any information on negotiation strategy in contract notices and ITT's – predominantly a distributive strategy is found
- In observations most aspects are assessed as being distributive with few instances of integrative negotiations
- In interviews participants tell they are aiming to be trustworthy and build up trust, but the picture is more nuanced or blurred

*"What now? I just can't figure it out  
What now? I guess I'll just wait it  
out  
What now? Oh-oh-oh-oh  
What now?"*





## Legal issues from my point of view

- Legal issues are not necessarily perceived as being hindering. How can this be explained?
  - Could it be that the interpretation of the room for changes are being used for own benefits?
  - Could it be, that it is because we hardly see challenges
- What is the actual room for changes in the tender material?
  - Can options be deleted?
  - Is time, penalties, budget basic elements?
- What is non-negotiable topics as per the ITT's?
- The answer might be coherent with the way the contracting authority has written its specifications?
  - The more specified, the smaller room for changes?

## What more is to be considered?

- “Value for money” – nice words or something to regulate?
- Purpose with the rules and contracting authorities' choices
- Power in negotiations
- Limitations in only looking at *ex ante* negotiations – no assessment of end cost
- Transaction costs – a public procurement evergreen

