



Codex

before that

good offers

*20 principles for and
recommendations for public
authorities' procurement of digitization services*

By Dansk IT in partnership with Dansk Industri,
The IT Industry, Danish Business and Danish IT Lawyers

About the Code for good tendering

The publication was published in March 2022 by Dansk IT in partnership with Dansk Industri, IT-Branchen, Dansk Erhverv and Danske IT-Advokater.

Inquiries about the publication can be made to:

Danish IT

Vermundsgarde 38A, st. television.

2100 Purchase name Ø

Phone: 33 11 15 60

Email: dit@dit.dk



Dansk Industri



DANSKE _ ADVOKATER

DANSK ERHVERV

Codex

before that

good offers

*20 principles for and
recommendations for public
authorities' procurement of digitization services*

Table of Contents

Executive summary

1. A new code - background and purpose 8

2. Objectives of a new 10

- a) Transaction costs and process time must be value-creating 10
- b) The consideration of tender compliance must not overshadow the consideration of business needs 11
- c) Proactive risk management must replace a widespread zero -fault culture 11
- d) The tender process must contribute to development and learning 13

3. The good 13

Principle 1: Get a handle on the strategic foundation and make the critical choices up-front 13

Principle 2: Stay up-to-date on solutions and suppliers through ongoing market monitoring and dialogue 15

Principle 3: Map the critical risks early and create a common risk picture as far as possible 16

Principle 4: Try something out - and start getting smarter 17

Principle 5: Ensure top management takes ownership and business management is involved from the start 17

4. The good way through the tendering process in 17

Principle 6: Choose a form of tender that is largely based on taking a stand on your own maturity and capability 17

Principle 7: Make room for dialogue and clarifications with an open and aggressive approach to sharing knowledge 20

Principle 8: Work smarter, not harder - a good tender process is focused without being pressured

Principle 9: Use external advisers with care - so that they also contribute to their own competence

Principle 10: Keep the focus on the needs of the end users and the applicability of the solution 21

Principle 11: Go for the simple first - and make room for the suppliers' knowledge, ideas and proven technology 21

Principle 12: When selecting suppliers, focus on minimizing real risks with few and relevant minimum requirements 22

Principle 13: Give room for factual judgment and managerial priorities - based on an argued and documented basis 23

Principle 14: Assign the price less weight, the more complex the solution is 24

Principle 15: Ensure that the evaluation model ensures high validity and transparency 24

Principle 16: Evaluate and attach importance to the Supplier's approach to risk management - with a focus on a common and communicated risk picture 24

Principle 17: Evaluate and place emphasis on the Supplier's presentation to ensure efficient processes and good cooperation - and including on the understanding of the Customer's organization and situation 24

5. The good follow-up 25

Principle 18: Ensure that both Customer and Supplier are ensured a relevant and appropriate evaluation and feedback 25

Principle 19: Pay attention to the connection between the tender and the subsequent contract process

Principle 20: Let complaints be the last resort - and take joint responsibility for the good

6. Application – how will the code come to life? 26

Executive summary

This publication presents a new codex for good supply. A code that can serve as guidance and inspiration for conducting tenders for digital solutions for the public sector.

The new code has been drawn up as a follow-up to the report "The state's tendering practices in the field of digitization - how to increase the value of digital investments", which was published by Dansk IT in 2020, and must be seen in the context of the "Code for good customer-supplier cooperation" from 2016.

Behind the new code is Danish IT in a partnership with Danish Industry, the IT Industry, Danish Business and Danish IT Lawyers. Furthermore, a number of state agencies and actors have contributed to the work.

In the Code for good procurement, 20 principles and recommendations are rolled out for efficient and value-adding procurement of digitization services. They are based on five objectives:

- a) Transaction costs and process time must be value-creating
- b) The consideration of tender compliance must not overshadow the consideration of business needs
- c) Proactive risk management must replace a widespread zero error culture
- d) Good customer-supplier cooperation must be a win-win
- e) The tender process must contribute to development and learning

With this as a starting point, the following 20 principles are recommended:

The good preparation

1. Get a handle on the strategic foundation and make the critical choices up-front
2. Stay up-to-date on solutions and suppliers through continuous market monitoring and dialogue
3. Map the critical risks early and create a common risk picture as far as possible
4. Try something out - and start getting smarter
5. Ensure top management takes ownership and business management is involved from the start

The good way through the tender process

Choice of tender form and process:

6. Choose a form of tender that is largely based on taking a stand on your own maturity and capability
7. Make room for dialogue and clarifications with an open and aggressive approach to sharing knowledge
8. Work smarter, not harder – a good tender process is focused without being pressured
9. Use external advisers with care - so that they also contribute to their own competence development

Requirements specification and selection criteria:

10. Keep the focus on the needs of the end users and the applicability of the solution
11. Go for the simple first and make room for the supplier's knowledge, ideas and proven technology
12. When selecting suppliers, focus on minimizing real risks with few and relevant minimums

requirements

Award criteria and evaluation:

13. Make room for common sense and managerial priorities - based on a well-argued and documented case
mented basis
14. Assign the price less weight, the more complex the solution is
15. Ensure that the evaluation model ensures great validity and transparency
16. Evaluate and attach importance to the supplier's approach to risk management based on a common and mediated
risk picture
17. Evaluate and place emphasis on the supplier's presentation to ensure efficient processes and good cooperation
- and including on the understanding of the customer's organization and situation

The good follow-up

18. Ensure that both customer and supplier are ensured a relevant and appropriate evaluation and feedback
19. Be aware of the connection between the tender and the subsequent conclusion of the contract
20. Let complaints be the last resort and take joint responsibility for the good process

The above principles and recommendations are expected to work through active use in everyday life and in connection with specific procurement actions – including possibly as an appendix to the state's standard contracts. The new code can also be accessed from the website detgodeudbud.dk.

1. A new code - background and purpose

Large sums of millions and thousands of hours are spent in the public sector every year on *tendering and purchasing* digitization services. The state alone annually makes digital purchases for approx. 16 billion DKK, and a significant part of these takes place in the form of tenders. It is obvious that such a massive consumption of resources requires consideration, experience gathering and learning with a view to streamlining and optimizing processes and results.

In addition, even more resources are spent on *subsequent development and implementation* of digital solutions without any guarantee that the many initiatives and projects create value. It is a fact that a number of major government IT projects in recent years have gone off track in relation to the original plan and business case. And it is likely that several of these derailments can be traced back to inadequate or inappropriate tenders.

In other words: A continuous focus on public tenders with a potential for optimization and improvement is both relevant and necessary. And this is where the need for good principles and experience-based recommendations for good procurement behavior at both the public authorities and at the private suppliers of digital solutions really comes to light.

In recent years, several analyzes and publications have shed light on the challenge of public tenders and finding the "recipe" for a good tender. In the present context, it may be relevant to highlight two publications separately.

In 2016, the "Code for good customer-supplier cooperation" was published, which was drawn up and published jointly by Danish IT, the Danish Agency for Digitalisation, Danish Industry, the IT branch and the IT project council. There has subsequently been broad support for the code, which takes its starting point in the tender process from a more general management perspective, and which in practice has helped to set the framework for good cooperation between customers and suppliers in connection with major IT projects.

In 2020, Dansk IT published the report "The state's procurement practices in the area of digitization - how does the value of digital investments increase?". Based on an extensive data collection as well as interviews and conversations with a large number of top public managers and key players in connection with government procurement processes, the report presents 14 recommendations to renew and improve the approach to the public sector's procurement of digitization services. In the report, it is recommended, among other things, that in close cooperation with representatives from the IT industry and from the state's institutions, a *code* is drawn up with principles for and recommendations for guidelines, good behavior and good examples of *good tendering practice*.

Against the above background, Dansk IT, in a partnership with Danish Industry, the IT Industry, Danish Business and Danish IT Lawyers - and with input from a number of government actors - has decided to draw up and disseminate a "Code for good tendering", which can cover the need for guidance and is read in context and synchronized with the existing "Code for good customer-supplier cooperation".

The "Code for good tender" is concretely provided in a working forum consisting of 16 top management representatives from government authorities, IT supplier companies and industry organizations - all with special knowledge of and experience with public procurement of digitization services. The commissary for and the participants in the work appears in BOX 1.

"Code for the good tender" is basically intended as inspiration for the organization and implementation of the good tender. It is particularly aimed at top managers, business managers and purchasers in the public sector as well as their advisors and suppliers of IT systems. The code has been drawn up on the basis of experiences and examples from primarily government digital investments, but it is expected that municipalities and regions can also benefit from and find inspiration in the material.

The presented code is based on tenders for *larger, complex and often business-critical IT systems*, but recommendations and principles can be used generically in connection with other types of tenders.

In the following, reference is consistently made to *the Customer* and *the Supplier* as the overall term for the provider and the offeror respectively. In the present context, the customer is the contracting state authority responsible for the public tender. The use of Customer and Supplier is a choice made based on a desire to be able to refer to the designations used in the mentioned "Code for good customer-supplier cooperation".

BOX 1

From the commission and participants in the work

Dansk IT, in partnership with Danish Industry, the IT Branch, Danish Business and Danish IT Lawyers, is responsible for the content of the code. In addition, a number of state agencies and other relevant actors have contributed input to the work.

From the commission:

"The aim of the initiative is to develop and roll out a code for good government tendering, which can bring tenderers, suppliers and advisers together on common guidelines for good behavior in connection with tenders in the government.

A code will have to relate both to the framework and methods for a tender at an overall level and to the actual organization and handling of the tender process - throughout the tender's life cycle - from need to contract. Preferably with examples of good practice."

The participants in the work:

- Mette Rose Skaksen, Deputy Director, Competition and Consumer Authority
- Martin Wood, IT Director, Danish Courts Agency
- Vibeke von der Sprong, Deputy Director, Danish Health Data Agency
- Signe Søgaard Jeppesen, Deputy Director, Danish Agency for Education and Research
- Cecile Christensen, Deputy Director, The Royal Library
- Jimmy Kevin Pedersen, Chief Consultant, Ministry of Defence
- Flemming Bent Thomsen, VP, Systematic (Danish Industry)
- Jan Winther, Partner, Netcompany (IT branch)
- Marlene Winther, Partner and lawyer, DLA Piper (Danish IT Lawyers)
- Milena Krosgaard, Partner and lawyer, Kammeradvokaten
- Jimmy Holst Rydahl, Managing Director, Fortem
- Børn Nielsen, Sales Director, Hewlett Packard Enterprise
- Malene Jæpelt, Chief Consultant, Danish Business
- Kiann Stenkjær Hein, Management Consultant, PA Consulting
- Jan Riis, CEO director, Lakeside A/S
- Jens Hornemann (Chairman), Adm. Director, Silverbullet A/S

2. Objectives for a new code

A code for good supply with a number of normative and experience-based recommendations for principles and good behavior only makes sense against a given context – *good supply* in relation to what? This chapter outlines a number of objectives for the effort to increase the value of digital investments in connection with the state's tendering practices in the area of digitalisation. The objectives are mainly set based on the analysis and recommendations from Dansk IT and the subsequent discussions with relevant stakeholders within public digitalisation. But also newer publications from e.g. The Danish Competition and Consumer Authority, the Danish Agency for Digitization and the Norwegian IT Council have contributed to the set objectives.

The objectives, popularly speaking, set *the corner flags* for the code and define the frame of reference for the established principles and recommendations.

a) Transaction costs and process time must be value-creating

In recent years, several studies have pointed to the need to reduce transaction costs and the process time in connection with the tender of larger and/or business-critical IT systems. In 2019, the State Auditors pointed out, on the basis of a report from the National Audit Office, that the ministries should strengthen their efforts to minimize transaction costs when carrying out tenders, as there are opportunities for optimization in several areas - both in ministries and with tenderers.

Subsequently, i.a. Dansk IT mapped that there is a widespread perception in the state of a potential for streamlining transaction costs. Eg. virtually all the business managers in the state point out that the tendering process takes a very long time, and almost as many indicate that the tendering process is resource-intensive. In the same group of managers, however, only approximately one in four finds that the tender process to a very high degree/to a large extent ensures a good result and that it ensures the best price. In the same investigation, examples have been found of the development of legacy systems that have had a total journey of 8-9 years' duration, from the time the need is identified until a solution is implemented. That is a long time in a world where technology develops ever faster.

In this context, Danish IT has, among other things, recommended that public authorities look at the possibilities of reducing costs for time-consuming mapping and pre-analyses carried out by external consultants - to instead go more directly to testing and development in some iterative processes.

In contrast to this, of course, is the fact that the development of new IT systems is a significant investment that requires thorough preparatory work. Transaction costs and process time in connection with the tender are in this connection necessary elements in the qualification of a decision basis. So the challenge is to find the right level in relation to the specific context, the degree of existing documentation and the organisation's maturity.

Objective 1

Transaction costs and processing time must be value-creating and in a reasonable relationship to the subject matter and size of the tender.

b) The consideration of tender compliance must not overshadow the consideration of business needs

The purpose of public tenders is essentially to create competition and a market for cost-effective and innovative IT solutions that generate value for public business. It is with this aim, as well as consideration for transparency, equality and compliance, that the Public Procurement Act has been adopted and implemented as a regulatory framework for a balanced relationship between on the one hand compliance in relation to compliance with the Public Procurement Act and on the other hand business support.

However, several circumstances indicate that in recent years the balance has been skewed in the direction of compliance – a development which, among other things, is described in Dansk IT's analysis of the state's tendering practices. Despite the relatively generous framework of the Public Procurement Act, the interpretation and application of the Act has led to a more restrictive practice, where the prevention of complaints and legal safeguards have overshadowed good business practice. This practice is not optimal. The choice and purchase of digitization services must in the first instance be driven by the needs of the business and the management's strategic priorities.

Objective 2

Purchasing and tendering of IT systems must not be dominated by considerations of law and tender compliance. It must be balanced to support the needs of the business in relation to legislation and public services - provided efficiently and in a timely manner.

c) Proactive risk management must replace a widespread zero error culture

In Dansk IT's analysis of the state's tendering practice, it is concluded that the tendering process is largely influenced by a political and administrative concern about making mistakes in the tendering process and the associated risk of a tender being reversed or ending up in the Complaints Board.

The concern is to some extent rooted in the additional work and significant additional costs associated with carrying out a new tender, but first and foremost in the state - as in the entire public sector - it is about avoiding criticism, loss of legitimacy and inappropriate political attention.

The challenge is that it is *the very concern* for errors - and the related zero-error culture - rather than the actual errors that govern and often complicate the tendering process. The fact is that the number of complaints compared to other countries is low and has been decreasing for the past several years. A zero error approach does not support – and in the worst case it opposes – the need for innovation and the testing of new technology. Concern about errors and complaints must not prevent the Customer from making the commercially relevant and correct decisions based on active risk assessment and mitigation. Courage and innovation must be able to be rewarded in the right context.

Objective 3

A widespread zero error culture must be replaced by a more structured and proactive risk management, where risks are mapped, analyzed and assessed as a starting point for active and factually based mitigating actions in relation to the specific tender.

d) Good customer-supplier cooperation must be a win-win

On the one hand, there are many indications that the cooperation between customers and suppliers in recent years - and after the launch of the mentioned "Code for good customer and supplier cooperation" from 2016 - has developed positively. The establishment of various cooperation forums and an aggressive articulation of the need for cooperation have by all accounts promoted openness and trust.

On the other hand, it can be stated that cooperation continues to be challenged in the specific tender situation, where customers often talk about suppliers' delays, scope-creep and missing deliveries, and suppliers for their part talk about rigid processes with "wrong" participants and lack of management involvement and openness from the public providers. In other words, there is potential for improvement.

A final but essential part of the good tender is that both Customers and Suppliers behave properly and meet each other without prejudice and constructively - across the phases of the tender process. The good range supports good cooperation. Here, reference is made to the "Code for good customer-supplier cooperation" with a focus on the principles therein. See BOX 2.

Objective 4

The good offer must ensure that the cooperation between Customers and Suppliers is established as a win-win relationship. It is in the tender process that the basis for the necessary mutual trust and openness is created, and the cooperation on the subsequent development or implementation project is founded.

BOX 2

From the Code for good customer-supplier cooperation

The 7 basic principles for customer-supplier cooperation can help to create a culture that can influence cooperation in a positive direction.

The principles are not locked to the phases of the project, but are valid for the entire life of the project:

- Project and collaboration are anchored in top management
- It is managed according to common goals and according to the most important business needs
- The right skills are matched and are present throughout the project
- Governance and scope are adapted to the nature of the project and are discussed early on
- Problems, challenges and risk analyzes are shared all the way through the project
- The focus is on transparency and openness
- Early and ongoing dialogue is cultivated

e) The tender process must contribute to development and learning

Completing a tender is both time- and resource-intensive. That is for the state authorities that prepare and implement the tender. And that is the case for the many suppliers who often spend time on both pre-qualification and submitting offers, and where for most there is a direct negative return-on-investment.

In that light and from an overall investment perspective, it is important that every tender process contributes to long-term learning and upskilling of both the authorities and the supplier field – and not least of the live-randorers who did not make it into the selection class in the first round. The focus must be on developing a more mature and competitively efficient market for digital purchases with better and cheaper supply and offers in the long run.

Objective 5

The good supply must contribute positively to the development of maturity and capabilities of both Customers and Suppliers with a view to expanding the market and upgrading the procurement of digitization services.

3. The good preparation

The preparation phase is critical and decisive for the good supply. It is in the clarification of the tender's strategic basis and the initial considerations about tender form that the prerequisites and basis for the tender process are established.

In relation to good preparation, this "Code for good tendering" points to a number of important recommendations and principles for guidance and compliance:

Principle 1: Get a handle on the strategic foundation and make the critical choices up-front

It is a key prerequisite for a successful tender that, as part of the preparation, a strategic foundation is established, where the customer actively and qualifiedly makes a number of strategic choices. It can, for example, be in relation to prioritizing the critical business needs and determining the scope. Or it could be a decision on new development versus configuring a standard system and including the balance between in-sourcing versus out-sourcing. Lack of strategic choices in the preparation phase means that critical clarifications and demarcations are pushed to later in the tender phase, which can complicate requirements and limit solutions. BOX 3 offers a template and a quick guide for setting up the tender's strategic platform.

BOX 3

Checklist for the tender's strategic foundation - critical choices and considerations before the start of the tender

- 1) **Understand the business need:**
 - a) What problem would we like to solve with the new solution?
 - b) Is there something in the business model or e.g. in the legislation that can be changed or simplified before digitalisation?
 - c) Which are the most critical business processes and who "owns" them?
 - d) Who are our key stakeholders and how do we involve them?
- 2) **Requirements for value creation:**
 - a) What value and what benefits do we expect to get from the solution? (financially, service- and quality-wise and organizationally)
 - b) Can we quantify and calculate the value?
 - c) Can we communicate the expectation of value creation to the suppliers?
- 3) **Determining the scope:**
 - a) What is our Minimal Viable Product (MVP) – the minimum solution – and what are possible additional packages for this?
 - b) Can we settle for MVP to reduce complexity and ensure project realization?
 - c) Are there critical dependencies – to other legislation, data transfer, 3rd party systems or subcontractors?
 - d) Should operation be considered from the start in the system design?
- 4) **System Strategy:**
 - a) Can all or parts of the business need be solved through adaptation or further development of it existing system?
 - b) Can all or part of the business need be solved by configuring a standard system that already exists in the market?
 - c) Will it be a fully integrated solution or a "best-of-breed" solution with integrations that best match the need?
 - d) Should the new solution "stand alone" or fit into an existing system landscape?
 - e) Are there requirements for standards or adaptation to a common public framework architecture?
- 5) **Identification and evaluation of the supplier and solution market**
 - a) Are there new or alternative approaches in the market that can complement or innovate the existing approach?
 - b) Are there already relevant solutions and suppliers on the market?
 - c) How is the competitive situation on the market – and is this something that needs to be taken into account?
 - d) How mature are any existing solutions and suppliers – including in collaboration with the public sector?
 - e) Do we have other special requirements for choosing suppliers?

- 6) Evaluation of own capabilities and readiness
 - a) Do we have ownership and understanding of the critical processes?
 - b) Do we have control over business processes and data – are they structured and documented?
 - c) Are our technological platforms up-to-date?
 - d) Do we have a handle on organization and roles?
 - e) Do we have the necessary skills – in terms of management, business and IT?
 - f) Do we have enough experience and knowledge about offering digital solutions?
 - g) Do we have the necessary capacity?
 - h) What opportunities do we have to strengthen ourselves with external resources and competences?

- 7) Process strategy:
 - a) What is the overall timeframe – and what defines it?
 - b) Is there an opportunity and space to test innovative approaches?
 - c) Should work be done with the development of prototypes, hands-on pre-projects or testing of sub-components before tender?
 - d) What central considerations must be taken into account in establishing a project organization?
 - e) How do we get users and employees involved in the right way?
 - f) Are there special requirements for stakeholder management?

- 8) Tender strategy:
 - a) Choice of tender form
 - b) The decision to use and possibly choose external advisers
 - c) Supplier strategy
 - d) Determination of selection and award criteria

Principle 2: Stay up-to-date on solutions and suppliers through continuous market monitoring and dialogue

As part of the preparation of a tender, it adds significant value to both the description of requirements and the tender process if the Customer has previously established *knowledge of the market* in the form of existing and potential solutions. This knowledge can be built up through ongoing and constant market monitoring of solutions and suppliers as well as an offensive and value-creating market dialogue with relevant suppliers prior to the specific tender. The suppliers, for their part, must be open, honest and active in giving Kunden insight into the solutions used, but also dare to challenge and problematize the prerequisites and framework for the provision of a concrete solution. The approach must be a shared desire for a critical dialogue that makes all parties smarter. See example 1.

EXAMPLE 1

Case: Region Central Jutland - tender with market dialogue

When Region Central Jutland had to acquire a new identity solution, the need was felt to map existing solutions in order to get a better sense of what is state-of-the-art in terms of user and technology.

The region therefore wanted to enter into a dialogue with the supplier market. In order for the dialogue not to simply become a presentation of the latest sales slides, the region wanted the suppliers to provide a running physical setup where they could demonstrate whether they could meet a number of user stories that the region had prepared for the purpose. There was great support for the process, which was carried out over approx. two months through numerous meetings with individual suppliers and consortia. From the region, a wide group of representatives participated with extensive knowledge of the practical workflows at the region's hospitals, IT operations, the architectural tour function, etc.

The market dialogue was a great success and gave surprising and important new knowledge to the region. It turned out, among other things, that there is a relatively large international supplier market with suppliers in both the Nordics, Europe and the USA, and that there were new technologies and standards on the way, which are expected to become market leaders within a few years. None of the suppliers could immediately accommodate all of the region's user stories, but the process gave a very good picture of which user stories presented the biggest challenges. Last but not least, the supplier-door dialogue gave an image of how important it is to formulate one's needs in an open way, so that the suppliers have the opportunity to find good, creative solutions to meet them.

Learning points:

- If critical IT solutions are to be acquired or replaced, thinking live should be strongly considered border dialogue into the tender process.
- A well-prepared and managed market dialogue can lead to very valuable knowledge with both customers and suppliers.
- Customers can gain important knowledge about new opportunities, new/upcoming technologies and how to best organize the upcoming tender.
- Suppliers gain important knowledge about what the customer's most important needs are and what it is important to focus on in the upcoming offer.

Principle 3: Map the critical risks early on and create a common risk picture as far as possible

Risk management is now an incorporated and documented practice in the management of major IT projects. In this connection, it is recommended that a risk management approach is incorporated already in connection with the preparation and implementation of the tender process. The good tender must therefore be built on top of an initial analysis of critical risks and, on this basis, an overall and management-based risk strategy. Two factors are decisive in this connection. Firstly, the Customer's risk analysis must, to the greatest extent possible, involve and be shared with potential Suppliers, so that a joint risk assessment is established from the start, and the risk management

can be included in the supplier's proposed solution. Secondly, the risk analysis must be balanced with an analysis of the business opportunities and the up-side that is linked to the critical risks. The key is that management assesses opportunities and risks against each other.

Principle 4: Try something out - and start getting smarter

In connection with an intended tender, it is recommended that the Customer - where possible and relevant - thinks through and utilizes the opportunity to "learn more" already in the preparation of the tender process. In this connection, good grips can e.g. be implementation of hands-on pre-projects, demonstrations and practical testing of solution components with one or more suppliers in compliance with the rules for market dialogue. And it can be collaboration with a specific supplier on the development of a prototype or a proof-of-concept, depending on the specific need. By trying something out, the risk can be minimized, the uncertainty can be reduced, and the probability of a relevant specification and a good tender process can be increased.

The Tenders Act contains the possibility to organize its market dialogue in several ways and thereby qualify the tender with input from one or more Suppliers in the preparation phase. The prerequisite is compliance with the basic procurement principles of equal treatment, transparency and non-discrimination.

The important thing is to ensure that the insights and special knowledge gained by selected suppliers are systematically exhibited and shared with the market.

Principle 5: Ensure that top management takes ownership and business management is involved from the start

The good tender must already in the preparation phase be anchored in the business management, so that the tender project is not just supported, but driven by business knowledge and strategic overview. As far as the socially and business-critical solutions are concerned, the involvement and ownership of top management must also be ensured - including representation in the project at executive level. The supplier must be able to match the Customer's managerial representation and, in addition, vouch for the involvement of management and key personnel responsible for delivery.

4. The good way through the tender process

Starting from the preparation phase, the good tender must find *the best way* through the tender process itself, from the first announcement to the choice of supplier. The best way may differ from tender to tender - depending on, among other things, domain, criticality, complexity and market - but with the "Code for the good offer" a number of principles are presented that are largely generic. In this chapter, the principles are arranged in relation to the overall phases of the tender process: 1) Choice of tender form and process; 2) Requirements and selection criteria; and 3) Award criteria and evaluation models.

Choice of tender form and process

Principle 6: Choose a form of tender that is largely based on the assessment of one's own maturity and capability

The choice of tender form must be largely based on the Customer's analysis of its own organizational maturity and the maturity of the supplier market. In this context, e.g. offer of own *framework agreements and dynamic*

procurement systems both flexibility and efficient procurement, but they make greater demands on the Customer's maturity as a procurement organization, ownership of the processes and an overview of solution needs - and on the Supplier's maturity. Conversely, application of joint public framework agreements such as SKI can be a good option for smaller and inexperienced purchasing organisations.

In other words, the choice of tender form is an equation that takes into account variables such as competences, processes, management as well as experience with and knowledge of the solution and the tender process. Having said that, all other things being equal, it is recommended that the starting point for choosing a form of tender is the *flexible forms of tender*, as they allow for a better alignment of expectations between the Customer and the Supplier and better opportunities for correcting errors and deficiencies in tender materials and offers . See BOX 4.

BOX 4

Maturity requirements for Customers and Suppliers - and matching to tender forms

In the various phases of the tender process, it may be relevant to decide on and to operationalize any requirements or expectations for maturity - both with the Customer and the Supplier. Maturity, in the present context, means having the necessary competences as well as well-developed and documented workflows and processes in place in relation to primarily the tender process.

For customers, the focus on maturity will primarily be relevant in the establishment of the tender's strategic foundation and in that connection as a basis for choosing the form of tender, as outlined for the checklist in BOX 3. In relation to the Supplier, setting up and assessing maturity will provide an opportunity to assess the market's matching of the strategic needs and solution requirements that are assumed.

Danish IT has previously - under the auspices of the Ministry of Science, Technology and Development - contributed to the publication "Maturity in IT-based business development projects" (2006) - and including to the development of models for measuring the maturity of customers and suppliers. Here, Customer Maturity in a slightly broader context is defined by:

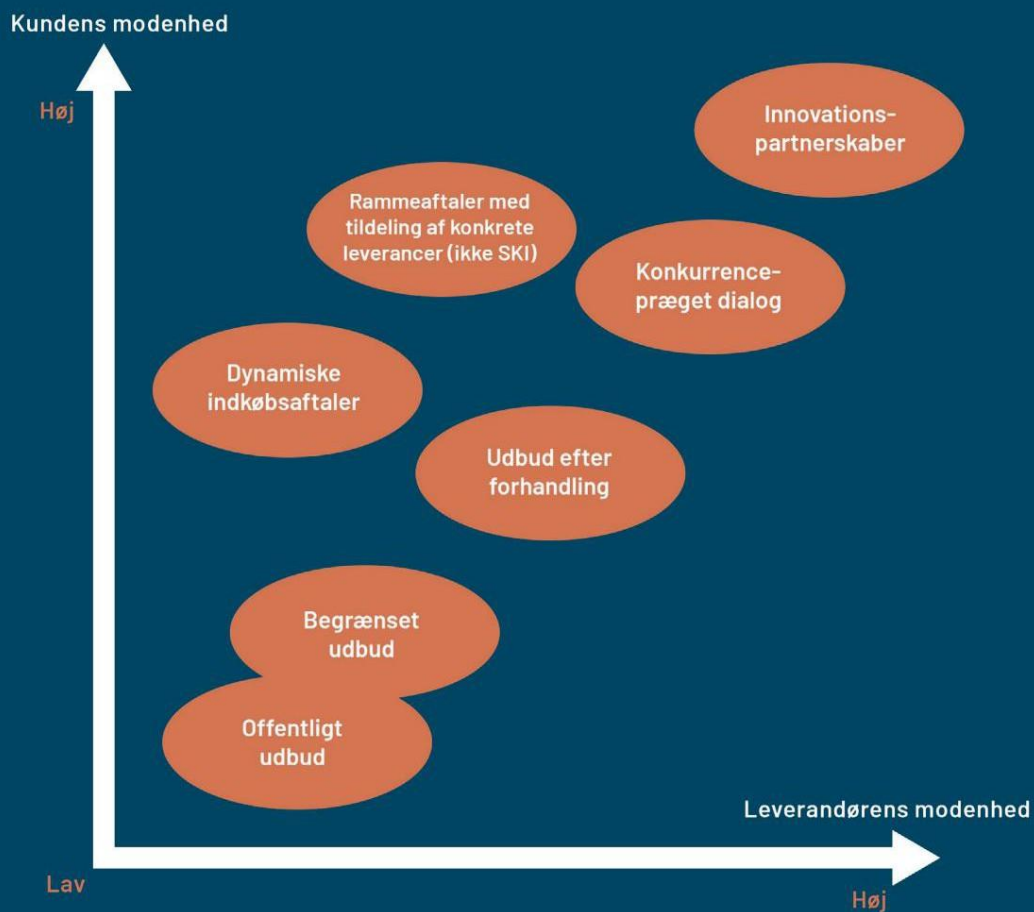
- a) The ability to ensure optimal IT support for the business/administration
- b) The ability to manage and implement IT-based business and management projects
- c) The ability to handle relationships with suppliers of development/adaptation/implementation of IT systems

by:

- a) The ability to develop and adapt IT systems
- b) The ability to manage projects
- c) The ability to collaborate with the customer
- d) Safety requirements for the supplier's working methods in the project
- e) The ability to comply with requirements for deliveries, quality assurance, reporting, etc

In the aforementioned publication, a generic model for operationalization and measurement of maturity is offered, which, in an adapted and updated form, can possibly serve as an inspiration in connection with the offer of a digital solution.

Overall, the evaluation of the authority's own maturity and of the Supplier's maturity will contribute to the determination of the most appropriate form of tender, as increasing flexibility in the phases of the tender process often places greater demands on the maturity of both parties. In the figure below, the Tenders Act's various forms of tender are ranked in relation to the dimensions low/high Customer Maturity and low/high Supplier Maturity.



Principle 7: Make room for dialogue and clarifications with an open and aggressive approach to sharing knowledge

It is in the common interest of the Customer and Supplier that a tender is disclosed and communicated as clearly as possible, so that lack of understanding and misunderstandings can be prevented. It requires openness, dialogue and reconciliation of expectations along the way, where the desire for sufficient clarification comes before the risk of saying something wrong. From the Customer's side, it is about not limiting dialogue and information for fear of complaints or that the tender will have to be rescheduled. And from the Supplier's side, it is about continuously inquiring about and commenting on the tender material during the process, including drawing attention to errors if they are discovered.

The most formalized form of dialogue in the bidding process is *negotiation*. As a general rule, negotiation will add value to the tender process. Negotiation can allow for scoping and scaling of the process as needed and open up mutual learning. There must, however, be a focus on real negotiation and the presence of relevant and necessary skills from both sides. During negotiation, the Customer and the Supplier can have a dialogue about whether the offer is within the scope of the tender documents. See example 2.

EXAMPLE 2

Case: SKI - Dynamic purchasing system for offering standard software

Standard software is changed and optimized almost constantly, which presents a challenge in determining all conditions in the preparation of tender materials. Therefore, SKI decided to make use of the dynamic procurement system. By using this form of tender, SKI had a better opportunity to create a market-compliant agreement that will not become outdated. In 02.06, there is no specific assortment linked to the agreement. It only comes when the customers specify their needs. The offer is dynamic in that there are continuous admissions for suppliers. Suppliers can try admission several times, and the offer thus does not "lock" the market, as might otherwise be the case. In this way, opportunities are secured for suppliers, while at the same time the challenge of constantly developing needs for software solutions at the customer is taken care of.

SKI has been in close dialogue with suppliers during the development of the tender material. There has thus been a focus on bilateral dialogues, i.e. with the large global companies, as well as a focus on engaging the life-savers who were part of the previous 02.06 (2017) agreement. The latter has been achieved by making use of supplier follow-up groups that have followed the tender process within the legal framework. This has helped to create an agreement that the market and customers have welcomed.

Both customers and suppliers emphasize that the agreement is easy to use. For the suppliers, the form of agreement has also created more transparency in what the customers demand, and thus an opportunity to adapt the supply to the demand. For the customers, it is a great advantage that there are both small and large suppliers on the agreement. At the end of 2021, there were almost 200 suppliers on the agreement, of which approx. 85% SMEs.

Learning points:

- Carefully consider which form of tender can create the most value.
- Consider the possibility of using a form of tender that allows continuous admission of suppliers.
- Focus both time and resources on hitting the market where the market is. As far as possible, make use of a multi-sided market dialogue.

Principle 8: Work smarter, not harder - a good tender process is focused without being pressured

An effective bidding process requires focus and maintaining momentum. But conversely, tenders must also be carried out with respect for the time consumption that the parties must invest in responding to the tender. On this basis, reasonable deadlines must be given for the response, and holiday periods must be protected. Furthermore, it will be good tender practice as far as possible to build the tender around tested concepts, standards and known project management tools with the possibility of reuse where it makes sense and is relevant, and to support the tender process digitally with e.g. electronic and easy access to filling in attachments.

Principle 9: Use external advisers with care - so that they also contribute to their own competence development

Use of *external advisers* – for e.g. preliminary analyses, process management and legal assistance – can add value to the tender process in terms of the supply of resources and competences. When using external advisers, however, the Customer must be aware of their contribution to the transaction costs, and that *responsibility* for and *ownership* of the tender and choice of solution cannot be outsourced. In this connection, the customer can consider incentive models, where the compensation of specially stationed consultants is linked to the result to a greater extent than to the process. Finally, it is important to ensure that the knowledge gained by the external advisers during the tender is effectively transferred during the transition from tender to project. Knowledge should therefore be continuously collected and transferred to the customer through structured competence development courses.

Requirements and selection criteria

Principle 10: Keep the focus on the needs of the end users and the applicability of the solution

A good requirements specification focuses on the needs and problems that must be solved - with the involvement of the end-users and with a focus on describing use-cases and user-stories as overarching principles. All other things being equal, tenders must help to support applicability and user-friendliness in connection with the roll-out and commissioning of larger IT systems.

Principle 11: Go for the simple first - and make room for the suppliers' knowledge, ideas and proven technology

The number of requirements in connection with a tender must generally be limited and the specification of *requirements simplified as much as possible*. The specification must describe *what* the solution must be able to do in relation to the business problem and what value must be created. Not how the solution is technologically built. The requirement specification can advantageously be inspired by knowledge of solutions in the market and, as far as possible, give room for the Supplier to put its own skills, experience, technologies/systems and solution components into play. And in this connection have the opportunity to reduce the price. In any case, it must be clear and transparent to the Supplier which requirements the Customer prioritizes and sees as business critical. See example 3.

EXAMPLE 3

Case: Danish Health Data Agency - framework agreement to facilitate an iterative development process

As part of the implementation of the overall program for strengthening the area of hearing rehabilitation, the Danish Health Data Agency has used SKI's framework agreement to offer the development of a subject-specialized module for use by both public and private hearing clinics, which enables interaction between hearing clinics' professional systems. The purpose of using SKI's framework has been to find a simple form of tender, limit the extent of the requirement specification to a level of need and business and initiate the clarification and development activity. The development phase itself was organized in an iterative process, where the customer via 14-day sprints assisted in clarifying doubts, continually tested releases and was able to see - and intervene - if the project's progress was hindered.

Learning points:

- Iterative processes are well suited for the development of specialist applications or modules with a snow vert or fixed scope.
- This model requires continuous effort and active participation on the part of the customer, and in addition there is a stronger need for local decision-making competence.
- An iterative course is no guarantee against overflowing time or budget - as this case also demonstrates strerer - but the resources have not gone to over-specification, unused analyzes or overhead in out the bidding process.
- The customer has used the funds on a smaller and focused solution specification, development activities at the supplier (in this case a smaller development house) and external assistance for supplier management and technical project management.

Principle 12: When selecting suppliers, focus on minimizing real risks with few and relevant minimum requirements

Prequalification is a good way to scan and prioritize in a large field of suppliers. The purpose of the pre-qualification process is primarily to ensure security of delivery and including the abilities and necessary capabilities of the selected suppliers to complete the task successfully. Often, the pre-qualification is focused unilaterally on formal criteria such as e.g. size and capacity, but the focus should first and foremost be on reducing the real risk and, in addition, be linked to the customer's strategic considerations in relation to collaboration partners. The main rule will be *few and relevant minimum requirements* with simple and targeted selection criteria.

Access to consortium formation in the pre-qualification can contribute to a greater breadth and variety in the field of solutions and suppliers. See example 4.

EXAMPLE 4

Case: The Defense Materiel and Procurement Agency (FMI) – strengthened procurement policy

The Defense Materiel and Procurement Agency's (FMI) so-called enhanced procurement policy aims to ensure the highest possible quality under the greatest competition, by e.g. to promote the participation of SMEs in tenders and thereby promote innovation and technological development.

The strengthened purchasing policy involves a wide range of measures which, among other things, affect finances, company sequencing, references and product samples as an alternative to references. Concretely, financial ability can e.g. not be used as a direct selection criterion. In addition, there are no minimum requirements for technical and professional ability. FMI can further require the submission of product samples, so that the selection can take place on the basis of the companies' ability to produce products similar to what is being offered. Finally, the company sequencing means that places are reserved for companies in 4 groups divided by size, where companies within the given groups compete for pre-qualification.

FMI's enhanced procurement policy illustrates several key points in this Code. The example makes it clear how strategically, in connection with pre-qualification and tendering, it can contribute to expanding the market and thereby create better opportunities for suppliers as well as customers. The inclusive approach thereby creates a good foundation for broad development and learning for market players. Instead of focusing unilaterally on formal criteria such as size, the policy is an example of how the pre-qualification can be thought of strategically differently both to give the industry better opportunities to be considered and improve, as well as to increase FMI's market knowledge.

Learning points:

- By envisioning better conditions for, among other things, The SMEs in connection with prequalification and tendering can contribute to expanding the market and thereby create better opportunities for both customers and delivery doors.
- An inclusive approach to pre-qualification creates a good foundation for broad development and shelter call for market players.
- By not focusing unilaterally on formal criteria such as size, a broader – and healthier – strategic perspective can be taken in connection with prequalification.

Award criteria and evaluation

Principle 13: Give room for factual judgment and management priorities - based on an argued and documented basis

As a starting point, award criteria must be relevant, transparent and targeted at the customer's business needs. Some award criteria will naturally be objective and measurable, but there must also be *room for qualitative assessments, factual judgment and common sense* based on the operationalization of professional assessments and management priorities within the chosen award criteria. Legally, there is nothing to prevent the use of discretionary and qualitative criteria with due regard for equal treatment and documentation for the decision-making basis.

In this context, it can additionally be considered to incorporate practical evaluation elements such as e.g. previously mentioned code-camps and proof-of-concept in the tender, so that the evaluation does not just become a paper exercise. However, this requires a good knowledge of the framework of the tender rules and maturity on the part of the customer and Le-

porch in relation to participation in such processes. In relation to this principle, Dansk IT has elaborated on the possibilities for qualitative assessments in a memo entitled "The state's tendering practice in the area of digitalisation: How can more room be created for real assessment, discretion and common sense in the tender assessment?" It can be downloaded via link in BOX 5.

Principle 14: Assign the price less weight, the more complex the solution is

The relationship between *price and quality* as award criteria must, other things being equal, reflect the complexity and perspective of the tender: the greater the complexity, the less the price must weigh in relation to the quality. The fact is that a complex solution is both more difficult to price for a Supplier and more difficult to budget and value for a Customer. In other words, the risk of price overriding the decision increases as complexity increases.

On the other hand, it applies to more standardized solutions where it is easy to compare and more difficult to differentiate in terms of quality, that the price must weigh more heavily as an award criterion, other things being equal.

The prerequisite and rationale for the above is that the necessary simplification of the business problem has taken place prior to the tender, and that as much complexity as possible has already been removed.

Principle 15: Ensure that the evaluation model ensures high validity and transparency

Evaluation must be based on the use of tested allocation and evaluation models and tools that, as far as possible, ensure *transparency and transparency* and provide the tendering suppliers with an explanation and understanding for selection and non-selection. A too one-sided application of standardized allocation models based on quantitative and objective conditions, however, entails a risk that the evaluation and selection of Supplier is reduced to a point task that puts the overall, strategic, management and business judgment on the sidelines.

Principle 16: Evaluate and attach importance to the Supplier's approach to risk management - with a focus on a common and communicated risk picture

Understanding and mitigating risks must be essential elements in award criteria and evaluation. The risk assessment and the risk picture must be shared by the Customer and the Supplier, but it is - as mentioned earlier - the latter, who must present and be assessed on its understanding of risk and risk management - and including how this matches the customer's presentation. The supplier must thus document and convey risk mitigation that leans into the common risk picture.

Principle 17: Evaluate and place emphasis on the Supplier's presentation to ensure efficient processes and good cooperation - and including on the understanding of the Customer's organization and situation

In connection with setting up and evaluating award criteria, there must be a significant focus on *governance and project organization* as a prerequisite for good cooperation. It is a fact that a trusting and well-organized collaboration between Customer and Supplier based on good professional relationships and experience is an important prerequisite for the successful execution of a digitization project. It is both about the organizational and decision-making model, and it is about joint reconciliation of expectations - including

with the possibility of informal conversations in a confidential room. The customer must prioritize a nuanced representation of the expectations for the collaboration, and the Supplier must present and be assessed to a considerable extent on its understanding of and approach to management, organisation, staffing and form of collaboration.

5. The good follow-up

Just as the preparation of a tender is essential for the overall result, the follow-up after choosing a supplier is critical for success. It is about the link to entering into a contract, learning effects and prevention of non-value-adding access to documents and complaints. Therefore, principles in connection with the follow-up of the tender's decision have a place in a "Code for the good tender":

Principle 18: Ensure that both Customer and Supplier are provided with a relevant and appropriate evaluation and feedback

Both losing and winning suppliers must - in addition to the immediate justification for opt-in or opt-out - always be offered a *follow-up meeting*, where the Customer gives verbal feedback on the offer submitted in a constructive dialogue. Both in recognition of the tender work and with a view to learning and long-term upgrading of suppliers for future tenders. Conversely, it must also be legitimate and natural for the Customer to receive feedback from the Supplier on both the tender process and the material basis for choosing a solution and Supplier.

Principle 19: Pay attention to the connection between the tender and the subsequent contract process

Selection of tender form, preparation of requirements specification, establishment of award criteria and evaluation must ensure a link to the subsequent contract process. Inadequacies in a tender process are reflected in inadequacies in *the contract process*, which are reflected in inadequacies in the execution of the project. As a starting point, the contract must be included as an appendix in the tender materials, but with attention to the fact that the basis of the agreement must be given room for further subsequent clarifications and flexibility when the project gets under way. The use of standardized contract paradigms and standard clauses can increase the quality of the offer, but these must be specifically adapted in order to ensure the development or implementation of the best solution.

Principle 20: Let complaints be the last resort - and take joint responsibility for the good process

Complaining about a tender to the Complaints Board is a right of the tenderer, which must be respected. But *complaints must be the last resort* when dialogue does not work. This implies that the supplier's clarification of ambiguities, questions and objections to the tender material must be emphasized as early in the tender process as possible, rather than any errors in the material being used as a "complaint valve" if the tender is lost. Complaints and threats of complaints must not become ritualistic as part of a supplier's market and competitor surveillance. From the customer's side, it is generally important that there is a real desire and an aggressive approach to inform, clarify and supplement the tender material for the tenderers. This is in contrast to a defensive approach to e.g. question-answer, where answers are limited and minimized as much as possible out of consideration for the risk of complaints.

6. Application – how will the code come to life?

A positive and visible effect of a code of conduct requires that recommendations and principles come to life through active application – in everyday life and in connection with specific procurement actions.

The parties behind this publication have chosen that the "Code of Good Tender" should be as easily accessible online as possible, so that potential users can access the publication at any time, and so that links to the publication's website can be made from relevant partners.

As part of active communication, it is desired that the "Code for good tendering" should be supported by a group of selected ambassadors who can contribute to actively communicating, referring to and including the 20 principles and recommendations. Significant stakeholders here will be the Norwegian IT Council, the Danish Agency for Digitalisation, the Danish Competition and Consumer Authority, SKI and the organizations behind this publication.

As mentioned at the outset, it has been the ambition that the "Code for good tendering" is to be launched and continuously articulated as a supplement to the "Code for good customer-supplier cooperation". In this connection, the "Code for good tendering" will be positioned as an appendix when concluding agreements based on the state's standard contracts, similar to the "Code for good customer-supplier cooperation".

The mentioned website can be accessed at detgodeudbud.dk, there will be the digital platform for sharing experiences and examples for updating and disseminating the 20 principles and recommendations. Other sources of supplementary information appear in BOX 5.

BOX 5

Relevant information about the tender:

Digital platform for sharing experiences and examples <https://detgodeudbud.dk/>

Dansk IT's report on the state's procurement practices in the area of digitization <https://www.dit.dk/Nyheder/Rapport/Udbudspraksis>

Code for good customer-supplier cooperation <https://cutt.ly/cAmABuV>

The government's tendering practices in the area of digitalisation: How can more room be created for real assessment, discretion and common sense in the tender assessment? <https://www.dit.dk/Om-Dansk-IT/Bestyrelse-Udvalg-Fagraad/Udvalget-for-IT-i-den-Offentlige-Sektor>

The tender portal
<https://udbudportalen.dk/>

The Danish Competition and Consumer Authority
<https://www.kfst.dk/udbud/udbudsregler/>

Udbud.dk
<https://www.udbud.dk/>

Facts about SKI agreements
<https://www.ski.dk/videnssider/fakta-om-ski-aftaler/>

Danish industry on tender
<https://www.danskindustri.dk/brancher/di-radgiverne/fokusomrader/offentlige-indkob-og-udbud/>

The barrister on tenders
<https://kammeradvokaten.dk/services/kontrakter-og-udbud/udbudsoversigten-20222023-nemt-overblik-over-udbudsreglerne>

The IT industry about tenders
<https://itb.dk/raadgivning/it-udbud/>

Danish Business Network for tenders
<https://www.danskerhverv.dk/Medlemskab-og-netvaerk/netvaerk/netvark-for-udbud/>

About the Code for good tendering

The publication was published in March 2022 by Dansk IT in partnership with Dansk Industri, IT-Branchen, Dansk Erhverv and Danske IT-Advokater.

Inquiries about the publication can be made to:

Danish IT

Vermundsgarde 38A, st. television.

2100 Purchase name Ø

Phone: 33 11 15 60

Codex for good tendering

This publication presents a new codex for good supply. A code that can serve as guidance and inspiration for conducting tenders for digital solutions for the public sector.

The new code has been drawn up as a follow-up to the report "The state's tendering practices in the field of digitization - how to increase the value of digital investments", which was published by Dansk IT in 2020, and must be seen in the context of the "Code for good customer-supplier cooperation" from 2016.

Behind the new code is Danish IT in a partnership with Danish Industry, the IT Industry, Danish Business and Danish IT Lawyers. Furthermore, a number of state agencies and actors have contributed to the work.

In the Code for good procurement, 20 principles and recommendations are rolled out for efficient and value-adding procurement of digitization services.