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The government's use and control of labour clauses in public contracts

1. Introduction and conclusion

1.1. Purpose and conclusion

1. This report concerns the government's use of labour clauses and control of compliance with labour clauses in public contracts.

2. The Danish government spends approx. DKK 42 billion on procurement annually. To ensure that services paid for by the government are provided under fair wages and working conditions, government institutions are required to include labour clauses in contracts with public sector suppliers, in accordance with the Circular on labour clauses in public contracts. The labour clause prescribes that contractors and sub-contractors must ensure that their workers are secured wages, working hours and working conditions that are no less favourable than those established under a collective agreement in the relevant industry. Additionally, the government institutions must monitor compliance with the labour clauses and impose sanctions when they are breached.

3. Industries that employ unskilled and foreign workers like, for instance, the building and construction industry, the cleaning services industry and the hotel and restaurant industry carry the greatest risk of social dumping and labour clause breaches. Denmark has seen a significant increase in the employment of foreign labour. The number of people from Eastern Europe working in Denmark multiplied by ten since 2004.

4. No systematic data are available on labour clause breaches in public contracts. In 2015, the Ministry of Employment conducted a survey among the ministries that indicated that they did not all have adequate focus on enforcing labour clauses. Moreover, experience from the municipalities shows that compliance with labour clauses is a challenge. Since 2018, the City of Copenhagen has checked labour clauses in the municipality's contracts systematically and based on risk assessments. Seventy per cent of the checks made in 2018 showed that employees working for the contractors were to some degree underpaid. There were also examples of breaches of labour clauses in other types of public contracts. For instance, 45 employees working on the construction of the Danish Metro received a payment of DKK 9.5 million, because they had been underpaid.

Labour clauses

A labour clause ensures that workers employed by contractors or subcontractors are secured wages, working hours and other working conditions that are no less favourable than those established for similar work under a representative collective agreement entered in Denmark.

The Circular on labour clauses

The background for the Danish Circular on labour clauses in public contracts is ILO convention no. 94 on labour clauses in public contracts that was adopted in 1949 and which Denmark is committed to following. In Denmark, the convention was implemented in a circular in 1966.

Statens Indkøbsaftaler

These are common framework agreements. The Agency for Public Finance and Management invites bids and awards contracts as part of the Government Procurement Programme. It is mandatory for all government bodies to procure goods and services under the framework agreements. The individual government bodies enter the final specific delivery agreements in accordance with the regulations of the individual framework agreements.

5. The requirement to use and monitor labour clauses applies to all public procurement of building and construction works, manufacturing and services, irrespective of the amount involved, i.e. it applies **both to purchases made directly by the ministries and purchases made by the ministries via the government's special procurement agreements (Statens Indkøbsaftaler)**. Procurement of goods and services under the special procurement agreements is potentially checked twice: by the Agency for Public Finance and Management, which is responsible for the agreements, and by the ministries procuring goods and services via the procurement agreements.

6. The purpose of the study is to assess whether the government is using labour clauses and checking compliance with the labour clauses in a satisfactory manner, when the government enters into public contracts. The report answers the following questions:

- Are the ministries including labour clauses in their public contracts and are the ministries adequately checking that the contractors comply with the labour clauses?
- Is the Agency for Public Finance and Management using labour clauses in Statens Indkøbsaftaler and is the agency ensuring adequate control of the contractors' compliance with the labour clauses in the public contracts?

The focus of the study is primarily the years 2015-2019. Rigsrevisionen initiated the study in June 2019.



Main conclusion

The government is not using labour clauses and checking compliance with the labour clauses in public contracts in a satisfactory manner, which involves a risk of unfair competition practices and goods and services being provided to the public sector under unfavourable wages and working conditions.

The ministries are not including labour clauses in all public contracts on delivery of services and goods with the industries that carry the greatest risk of labour clause breaches. Nor do the ministries adequately check the contractors' compliance with labour clauses in public contracts.

The building and construction industry and the green sector are among the areas that carry the greatest risk of labour clause breaches. Yet, 26% of the departments and government agencies are not including labour clauses in their contracts with contractors in the building and construction industry, and 39% of the departments and government agencies fail to do so in contracts entered into with the green sector. However, the study also shows that government agencies that enter into many public contracts with contractors in the industries that carry the greatest risk of breaches are more likely to include labour clauses in their public contracts than agencies entering few contracts.

The ministries' control of compliance with labour clauses in their public contracts is limited. In the period 2015-2019, 78% of the departments/agencies did not monitor compliance with labour clauses in the industries carrying the greatest risk of labour clause breaches. The circular prescribes that the ministries carry out adequate control of labour clause compliance, which means that the ministries are not required to check all public contracts. However, the study found that written assessments of the risk of labour clause breaches in public contracts were not available. Making risk assessments is essential to determine the extent of control required to establish whether the contractors comply with the labour clauses in the public contracts. The study also shows that several ministries carry out control activities only on suspicion of breaches. Based on this finding combined with the ministries' very limited control of labour clause compliance, Rigsrevisionen concludes that the ministries are not carrying out adequate control of labour clause compliance.

The Agency for Public Finance and Management uses labour clauses in five selected public contracts entered under Statens Indkøbsaftaler, but the agency fails to ensure that the contractors' compliance with the labour clauses is adequately checked.

The Agency for Public Finance and Management includes labour clauses in the five selected public contracts entered under Statens Indkøbsaftaler. However, the agency has not ensured clear division of responsibility between the agency and the ministries in relation to checking labour clause compliance and imposing sanctions in the event of labour clause breaches. The agency has not assessed the risk of labour clause breaches in connection with contracts entered into under Statens Indkøbsaftaler, which, in the opinion of Rigsrevisionen, is essential to facilitate adequate control of labour clauses.

Out of the five selected procurement agreements that concerned industries carrying the greatest risk of labour clause breaches (security guard systems, moving, conference service, cleaning, printing works, copying and print-outs), the ministries only checked compliance with labour clauses in contracts under the cleaning services agreement, in the period 2015-2019. Fourteen per cent of the departments/agencies that had procured services under the cleaning service agreement checked compliance with the labour clause. The Agency for Public Finance and Management has not taken initiative to check compliance with the labour clauses in contracts entered into under Statens Indkøbsaftaler.