The background of the entire page is a complex, multi-layered architectural wireframe. It consists of numerous thin, dark lines that intersect to form a dense, three-dimensional grid. The lines are arranged in a way that creates a sense of depth and perspective, with some lines appearing to recede into the distance. The overall color palette is a mix of dark greys and blacks for the lines, set against a light beige or tan background. The wireframe structure is not uniform, with some areas being more densely packed than others, suggesting a complex building or infrastructure design.

# Pay and Working Conditions in Public Contracts

Best Practice Guidance

A large, solid green circular graphic is positioned in the bottom-left corner of the page. It is a thick, ring-like shape, resembling a stylized letter 'C' or a partial circle. The green is a vibrant, medium-toned shade. It overlaps the bottom edge of the orange text box and extends towards the left edge of the page.

# FOREWORD

**SOCIALLY RESPONSIBLE** public procurements can help to set standards in the labour market and be a means of influencing actors in the market. This guidance intends to help those responsible for making sure pay and working conditions requirements in public contracts for services, building and construction works are acted on. It is based on best practices in the building, construction- and cleaning industries in Norway, but can also be used for procurements in other industries that are subject to the Regulation on Pay and Working Conditions in Public Contracts. The guidance is written at the request of the Norwegian Ministry of Labour and Social Affairs and is one of the measures in the government's strategy for combating work-related crime.

Difi would like to thank: the Norwegian Labour Inspection Authority, the Municipality of Asker, Boligbygg Oslo KF, the Municipality of Bærum, the Norwegian Contractors/suppliers Association (EBA), the Fafo Research Foundation, the Norwegian Defence Estates Agency (NDEA), Implen Norge AS, ISS Facility Services AS, the Norwegian National Rail Administration, the Norwegian Association of Local and Regional Authorities (KS), the Norwegian Confederation of Trade Unions (LO), the Norwegian Labour and Welfare Organisation, the Norwegian University of Life Sciences (NMBU), Omsorgsbygg Oslo KF, the Municipality of Oppegård, the City of Oslo's Agency for Improvement and Development, Oslo Airport, the Municipality of Ski, the Norwegian Employers Association Spekter, the Norwegian Public Roads Administration, Statsbygg, Tronrud GRUPPEN AS, Undervisningsbygg Oslo KF, the Norwegian Immigration Appeals Board (UNE), Veidekke Entreprenører, Virke - the Enterprise Federation of Norway, and the Norwegian Confederation of Vocational Unions (YS).

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In Report to the Storting (White Paper) No. 29 (2010-2011) *Joint Responsibility for a Good and Decent Working Life* the authorities clearly state that social dumping occurs when foreign workers are exposed to breaches of health, environmental and safety rules, including rules concerning working hours and accommodation standards.

Furthermore, social dumping occurs when foreign workers are offered pay and other benefits that are unacceptably poor compared to what Norwegian employees normally earn, or which do not satisfy regulations on general application of collective agreements where these apply.

You can help combat social dumping in public procurements by stipulating requirements on pay and working conditions, and check that suppliers and sub-suppliers comply with these requirements during the term of the contract. Difi recommends that the procurement process is executed in three phases:



Many find the contract follow-up phase challenging. The purpose of this guidance is to help you with the work of following up pay and working conditions in public contracts in practice.

You find more guidance in Difi's "Take Responsibility – Combat Social Dumping in Public Procurements" guide and on Difi's website, [www.anskaffelser.no/sosial-dumping](http://www.anskaffelser.no/sosial-dumping), which will help you ensure that public procurements are properly executed with respect to statutory pay and working conditions requirements. This guidance is only available in Norwegian.

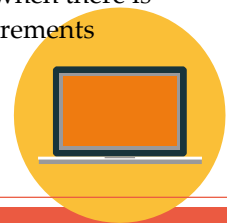
## Best practice

A number of public contracting authorities have good systems for following up pay and working conditions in relation to contracts. Some of them have developed good tools and templates for their work. Difi has collated a number of these organisations' in-house documents and developed general guidance and tools based on what is currently regarded as best practice.

The Federation of Norwegian Construction Industries (BNL) has written a special guide on choosing reliable suppliers for the business sector. The goal is to ensure that by making good choices in the building industry dishonest and criminal actors will be shut out of the contract chain. You can find BNL's guide on [www.bnl.no](http://www.bnl.no)

The guidance is structured as a checklist with different levels: *must*, *ought to* and *can*. The things that *must* be done are statutory requirements and therefore represent the absolute minimum requirements for the followup work. In addition to this, Difi has put together some recommendations regarding what your organisation *ought to* do in addition to the statutory requirements, in order to reinforce the protections against social dumping. We have also included some suggestions that *can* be followed by advanced users and/or when there is a particularly high risk of pay and working conditions requirements being breached.

**TOOL**



You find more information, tools and examples on the topic pages: [www.anskaffelser.no/sosial-dumping](http://www.anskaffelser.no/sosial-dumping) (only available in Norwegian)

## Why combat social dumping?

Contracting authorities have a particular responsibility to combat social dumping. Although pay and working conditions are primarily the responsibility of the direct employers, contracting authorities have a duty to check compliance with these requirements in connection with their contracts.

Social dumping has serious social and economic consequences, which also extend beyond those directly affected. The more widespread social dumping becomes in a sector/industry, the harder it will be to uphold the workplace rights that are built up over time. When dishonest suppliers win tenders based on unacceptable pay and working conditions, this obstructs competition on equal terms. Reliable suppliers could eventually be squeezed out of the market. In the experience of the Norwegian Labour Inspection Authority, there is often a correlation between social dumping and the uncovering of criminal situations/networks. Working with suppliers who breach regulations also represents a significant reputational risk to your organisation.

*The public sector must lead the way in promoting a responsible labour market through their procurement processes.*

THE GOVERNMENT'S STRATEGY FOR  
COMBATING WORK-RELATED CRIME

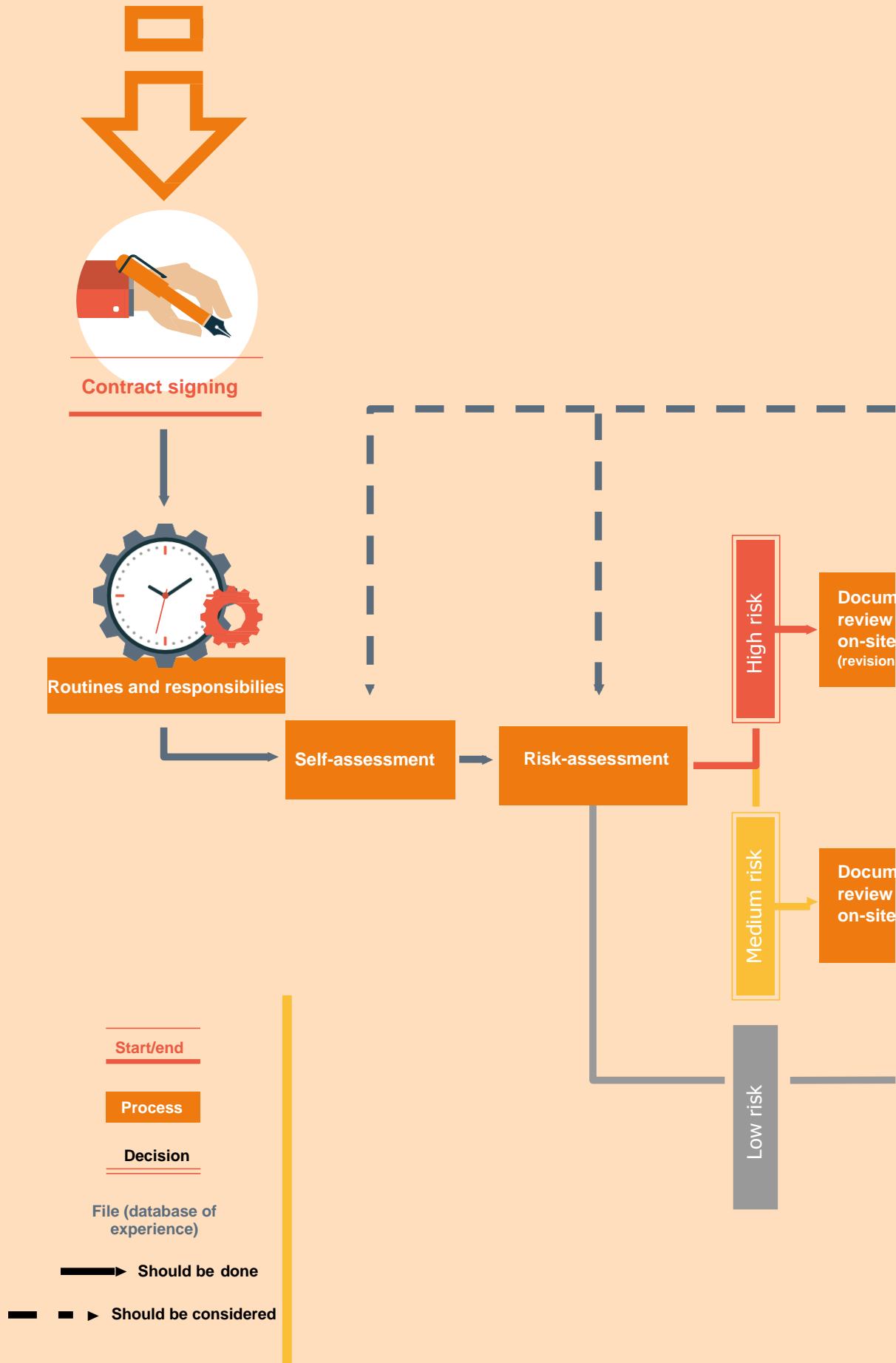
## Minimum requirements

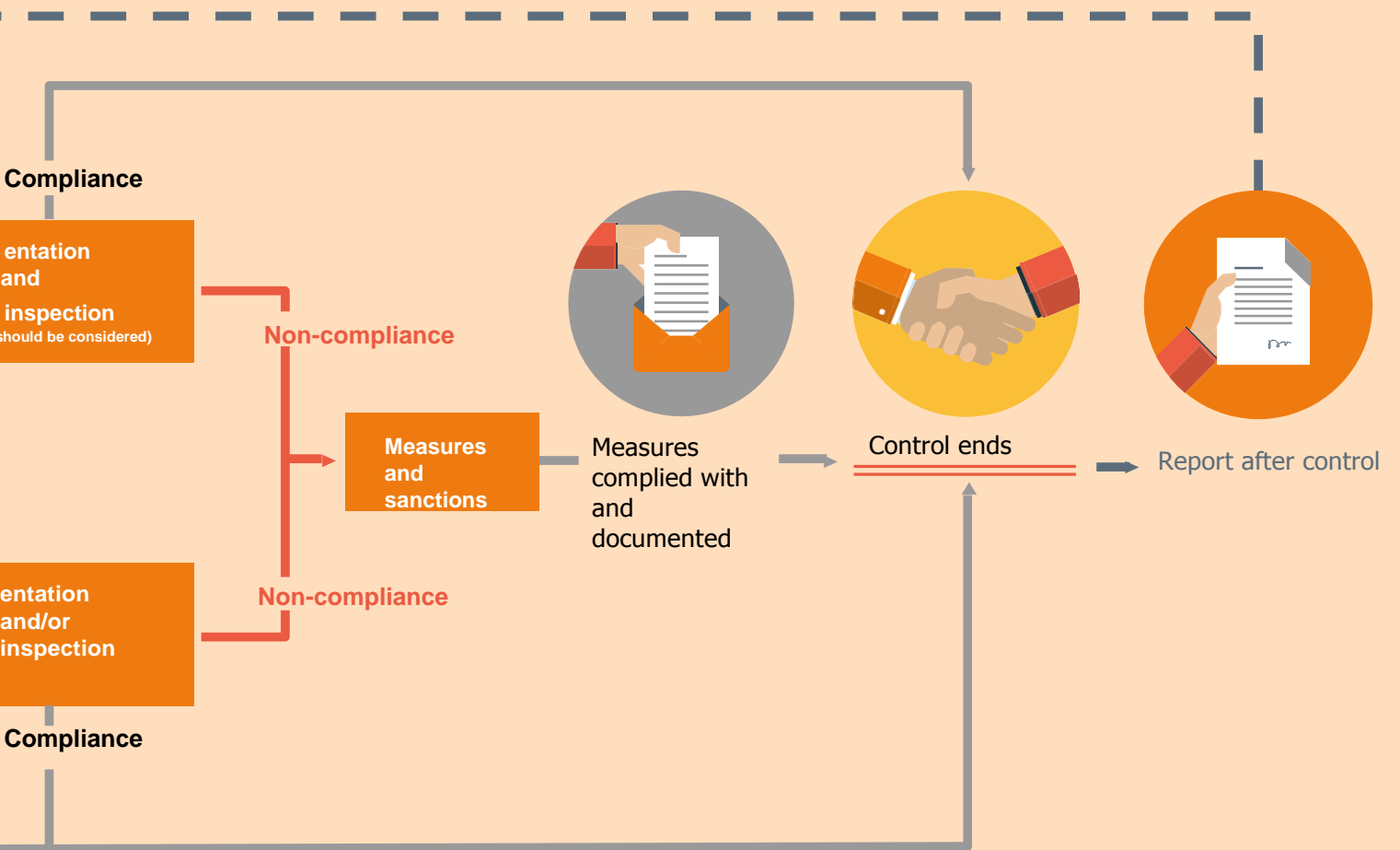
The regulations require contracting authorities to:

- Inform in the announcement or tender document that the contract will contain requirements on pay and working conditions, documentation and sanctions in line with the Regulation on Pay and Working conditions in Public Contracts. It is adequate to include the contract containing requirements concerning pay and working conditions, but Difi recommends that you also state this under "Special contract terms and conditions" in Doffin/TED.
- In the contract:
  - set a requirement that employees who participate in fulfilling the contract must have pay and working conditions in accordance with relevant regulations on general application of collective agreements and/or nationwide collective agreement for the industry in question.
  - set a requirement that the supplier and sub-suppliers upon request must document compliance with the requirements
  - decide upon suitable sanctions to encourage the supplier and sub-suppliers to fulfil the requirements
- In the contract follow-up:
  - for procurements in general application<sup>1</sup> areas, establish *written* systems and routines
  - carry out necessary controls to make sure the pay and working conditions requirements are acted on. The thoroughness of a control can be tailored to the needs in the industry concerned, geographic area, etc.
  - comply with statutory duties of confidentiality and protect personal data and other sensitive information
  - document the process in accordance with the applicable regulations, including the Public Administration Act and Archives Act

<sup>1</sup> You will find an updated overview of generally applicable collective agreements on: [www.arbeidstilsynet.no](http://www.arbeidstilsynet.no).

# CONTRACT FOLLOW-UP







ONE CRITICAL PREMISE to successful follow-up of pay and working conditions is to make sure you put the requirements that apply, as well as the sanctions, in the contract.

#### THE ORGANISATION MUST:

- **Stipulate in the contract that the supplier and any sub-suppliers must comply with the regulation on pay and working conditions in public contracts**
- **Stipulate in the contract that the supplier and any sub-suppliers must document that the requirements are being fulfilled when asked to do so by the contracting authorities**
- **Stipulate appropriate sanctions in the contract that will apply if the supplier and sub-supplier(s) do not comply with the provisions. The sanctions must be suited to encourage the supplier or sub-suppliers to fulfil the requirements.**

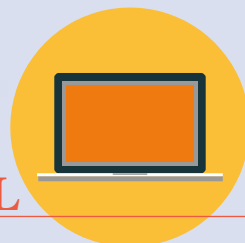
#### THE ORGANISATION OUGHT TO:

- Stipulate in the contract that the supplier must send the contracting authority a completed self-assessment form for pay and working conditions, at the latest within one month after the contract is signed

#### THE ORGANISATION CAN:

- Stipulate sanctions in the contract that will be applied if the supplier spends an unreasonably long time to submit demanded documentation
- Stipulate in the contract that all employees must wear a visible ID card where required (statutory requirement for employees in the building-, construction and cleaning industries)
- Stipulate in the contract requirements on preliminary approval of sub-suppliers
- Especially relevant for building and construction: stipulate a limit on the number of levels of sub-suppliers





## TOOL

Difi's recommended standard contract requirements for pay and working conditions  
[www.anskaffelser.no/sosial-dumping](http://www.anskaffelser.no/sosial-dumping) (only available in Norwegian)



# ROUTINES AND RESPONSIBILITIES

THE OVERARCHING RESPONSIBILITY for the work on combating social dumping in public contracts lies with the management of the organisation and should be described in relevant strategy documents. Difi also recommends incorporating the pay and working conditions requirements in documents regarding routines, such as handbooks and checklists.

The person responsible for following up pay and working conditions could, for example, be the purchasing manager, contract manager, project manager, cleaning manager, property manager or coordinator for the execution of the building project. It may also be appropriate to involve one or more people from HR/the personnel department who can act as a resource when obtaining and interpreting documentation of pay and working conditions, as well as any labour law matters.

*Incorporate the pay and working conditions requirements in key documents containing routines, such as handbooks and checklists.*



#### THE ORGANISATION MUST:

- Establish *written* systems and routines for procurements where regulations on general application of collective agreements apply to check and, if necessary, follow up that the requirements in the provisions are complied with

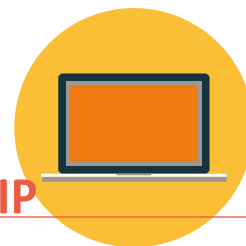
#### THE ORGANISATION OUGHT TO:

- Establish *written* systems and routines for all procurements covered by the Regulation on Pay and Working Conditions in Public Contracts to check and, if necessary, follow-up that the requirements in the regulations are complied with
- Document who is responsible for following up pay and working conditions in the contract. Document this in, for example, the contract strategy
- Ensure that the person responsible for following up the supplier has the necessary resources and expertise

#### THE ORGANISATION CAN:

- Describe the goals of the work on combating social dumping in relevant strategy documents
- Define goals and measuring parameters for the work on combating social dumping and measure the results annually
- Report goal attainment of the follow-up work in the annual report
- Ensure that the management receives reports on completed controls
- Discuss the status of the work on combating social dumping in management meetings

TIP



You will find an updated overview of generally applicable collective agreements on: [www.arbeidstilsynet.no](http://www.arbeidstilsynet.no).

# SELF-ASSESSMENT

DIFI RECOMMENDS that contracting authorities require self-assessment on pay and working conditions from the supplier by a deadline stipulated in the contract (the recommended deadline is within one month after the contract is signed).

To inform about the self-assessment requirement as early as at the announcement of the competition may in itself hold a preventive effect against breaches of pay and working conditions during the term of the contract. However, this requires that you as the contracting authority use the answers provided by the supplier actively when assessing risk in the contract and as a basis for dialogue with the supplier. Otherwise, the self-assessment will be perceived as a burden and a waste of time. It is, therefore, important to plan how the information will be managed and allocate the necessary resources for the work.

The responses from the supplier will be important sources of information for risk assessment. Obtaining and assessing the responses in the self-assessment form can also be regarded as fulfilment of the requirement to carry out *necessary control*. In addition to this, a limited documentation review can be carried out to verify the contents of the self-assessment.

You can read more about risk assessment and necessary control below "**Risk assessment**".



*Obtaining and assessing the responses in the self-assessment form can be regarded as fulfilment of the requirement to carry out necessary control.*

#### THE ORGANISATION MUST:

- Carry out necessary control of whether pay and working conditions requirements are acted on
- Document the process by filing completed self-assessment form as an attachment to the contract

#### THE ORGANISATION OUGHT TO:

- Stipulate in the contract that the supplier must complete a self-assessment form for pay and working conditions (recommended deadline: within one month after signing the contract)
- Use the responses from the supplier as a basis for risk assessment

#### THE ORGANISATION CAN:

- Stipulate sanctions in the contract that will apply if the supplier does not submit the self-assessment form by the set deadline

## TOOL



Difi's template for Self-assessment concerning pay and working conditions: [www.anskaffelser.no/sosial-dumping](http://www.anskaffelser.no/sosial-dumping) (Only available in Norwegian)

THE CONTRACTING AUTHORITY MUST CARRY OUT *necessary control* to ensure that pay and working conditions requirements in contracts are acted on.<sup>2</sup>Self-assessment with a subsequent risk assessment may in many cases constitute an appropriate control that contract terms and conditions are complied with during the term of the contract. This particularly applies to:

- Contracts with a low risk of social dumping
- Contracts where previous good experiences with the supplier and sub-supplier(s) have been documented
- When the responses in the self-assessment are complete and credible

Even if the risk is regarded as low, this does not mean that breaches of pay and working conditions may not occur. However, it is important to prioritise resources to follow up contracts with the greatest risk.

The organisation should conduct a risk assessment when signing the contract to determine which contracts, and which aspects of the contract, that have to be checked more thoroughly. Risk assessments can also be conducted regularly during the term of the contract.

The risk assessment is carried out when those responsible, for example executive officers, managers and contract administrators, meet to discuss risk factors in the contract.

The results of the risk assessment will provide an indication of whether there is a need to proceed with a more extensive control (escalation). Even in the case of low risk, Difi recommends that the organisation carry out random checks (see "**Documentation review**").

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What *necessary control* entails will depend on a concrete assessment. For example, there will not necessarily be the same need for control when new contracts are signed with suppliers whom the contracting authority has cooperated with earlier and knows as serious and law-abiding businesses. When signing contracts with new suppliers there may be a need for more extensive documentation and control. If the supplier and sub-suppliers prove to be reliable, the control can be conducted in the form of random checks.

<sup>2</sup> Regulation on Pay and Working Conditions, section 7



## TOOL

### THE ORGANISATION MUST:

- Carry out necessary control of whether pay and working conditions requirements are acted on
- Document the process by filing the conclusions of the risk assessment as an attachment to the contract

Difi's template for risk assessment concerning pay and working conditions: [www.anskaffelser.no/sosial-dumping](http://www.anskaffelser.no/sosial-dumping) (only available in Norwegian)

### THE ORGANISATION OUGHT TO:

- Conduct risk assessments regularly, for example once a year in connection with the ordinary follow-up of the supplier
- Conduct a new risk assessment when there are indications of potential breaches (for example, negative coverage in the media, orders from the Norwegian Labour Inspection Authority, changes to company name/organisation number)
- Consider to carry out random checks during the term of the contract, even if the risk proves to be low and the control has ended (a documentation review or an on-site inspection should be considered)

### THE ORGANISATION CAN:

- Follow up the risk assessment with a more thorough control if there is a medium to high risk of breach (a documentation review and/or an on-site inspection should be considered)

*Prioritise resources to follow up contracts with the greatest risk.*



# DOCUMENTATION REVIEW

FOR A MORE THOROUGH CONTROL after self-assessment, the organisation can carry out a documentation review. Difi's recommended standard contract terms and conditions give you the right to conduct a documentation review to control compliance with pay and working conditions requirements.

It is important to consider what type of documentation it is appropriate to obtain. This especially applies to employment contracts, time sheets and payslips for employees that directly contribute to fulfilment of the contract.

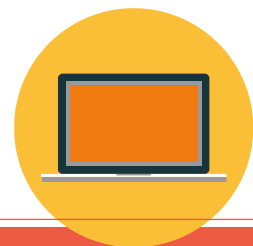
It may be appropriate to obtain the documentation in two rounds:

1. the supplier's agreed pay and working conditions with any sub-suppliers; updated list of applicable nationwide and generally applicable collective agreements; pay scales for job categories/job codes and rates/supplements for shifts, rotas, overtime and inconvenience;
2. employment contracts; time sheets; payslips; coverage of travel, board and lodging expenses

More information can be obtained, but remember that some of the documentation contains personal data that could require the consent of the employees. The requirements for processing personal data will apply in these circumstances. Therefore, Difi recommends that you decide which information you need from the supplier based on the risk assessment and draw up a plan for how this will be processed.

It is also possible to control documentation during on-site inspections.

## TOOL



Difi's template for documentation review of pay and working conditions  
[www.anskaffelser.no/sosial-dumping](http://www.anskaffelser.no/sosial-dumping) (only available in Norwegian)



#### **THE ORGANISATION MUST:**

- **Carry out necessary control of whether pay and working conditions requirements are acted on**
- **Make sure the duty of confidentiality is complied with when obtaining documentation and that personal data and other sensitive information is processed in a legal and proper manner**

#### **THE ORGANISATION OUGHT TO:**

- Prioritise conditions that are to be inspected on the grounds of the conducted risk assessment
- Obtain relevant documentation and control conditions on the grounds of the conducted risk assessment
- Obtain the applicable nationwide collective agreement provisions
- Present the observations to the supplier in writing so that the supplier has an opportunity to comment on the observations, provide additional information or clear up misunderstandings (contradiction)

*Difi recommends that you decide which information you need from the supplier based on the risk assessment and draw up a plan for how this will be processed.*

# ON-SITE INSPECTIONS

DIFI'S RECOMMENDED standard contract requirements for pay and working conditions give you access to conduct announced or unannounced on-site inspections at a supplier, sub-supplier, and at the location where the service is being performed. Such a control may include access to pay and personnel systems. If you use contract terms/requirements other than Difi's, the access to conduct on-site inspections and the right to inspect internal systems must be specifically included in the contract.

The approach will vary depending on whether the inspection is announced or unannounced. In the case of announced inspections, contact the supplier in advance and describe the inspection procedure. It may be appropriate to inform a supplier of an announced inspection only a short time in advance, for example three-seven days.



*Public organisations must carry out necessary control of whether pay and working conditions requirements are acted on.*

#### THE ORGANISATION MUST:

- **Carry out necessary control of whether pay and working conditions requirements are acted on**
- **Make sure the duty of confidentiality is complied with when handling documentation and that personal data and other sensitive information is processed in a legal and proper manner.**

#### THE ORGANISATION OUGHT TO:

- Consider whether the inspection should be announced or unannounced
- Prioritise conditions that should be inspected on the grounds of the conducted risk assessment
- Carry out inspections at the sub-supplier
- Present the observations in a final meeting with the supplier or in a document so that the supplier has an opportunity to comment on observations, provide additional information or clear up misunderstandings (contradiction)

#### THE ORGANISATION CAN:

- Conduct inspections at the location where the services are being performed, in accordance with a checklist prepared on the grounds of the risk assessment
- Consider conducting an unannounced on-site inspection outside normal working hours. The chances of uncovering breaches are greater then.
- Consider using an independent third party to conduct the inspection. As the contracting authority you are responsible for the follow-up and should define what will be controlled
- Check ID cards in the workplace where these are required

## TOOLS



You find more guidance on on-site inspections on:  
[www.anskaffelser.no/sosial-dumping](http://www.anskaffelser.no/sosial-dumping)  
(Only available in Norwegian)

# MEASURES AND SANCTIONS

IF BREACHES of pay and working conditions requirements are revealed, the contracting authority should initiate measures and consider possible sanctions. Measures and sanctions must be initiated based on the seriousness and scope of the breach. Possible sanctions include remedying, daily liquidated damages, retaining the contract sum, and cancellation.

The Regulation on Pay and Working Conditions in Public Contracts requires the incorporation of provisions on sanctions in the contract (see "**Contract signing**").



*Measures and sanctions must be initiated based on the seriousness and scope of the breach.*

#### THE ORGANISATION MUST:

- **Assess the seriousness of nonconformities and breaches, and initiate the necessary measures and sanctions**

#### THE ORGANISATION OUGHT TO:

- Notify the Norwegian Labour Inspection Authority of any unacceptable conditions related to the working environment
- Communicate with the supplier/sub-supplier in writing
- Ask for the supplier's comments on any findings (contradiction)
- Give the supplier a reasonable deadline to remedy the situation and document that it has been done
- Consider engaging legal assistance if there is any doubt about which measures are correct

#### THE ORGANISATION CAN:

- Ask the supplier for a binding action plan for remedying nonconformities that will take some time to correct



### TIP

The Norwegian Labour Inspection Authority should be notified of any unacceptable conditions relating to the working environment:

<https://tips.arbeidstilsynet.no>

# POST CONTROL REPORTS

COMPLETED CONTROLS of pay and working conditions must be documented in accordance with relevant regulations, especially the Public Administration Act and the Archives Act. Difi recommends writing a memo or report after conducting controls. This document will, together with a written risk assessment, show that you have fulfilled the organisation's duty to carry out necessary control in accordance with regulatory requirements. The report can also provide a basis for future control, both within the same contract and as an example that can be used when following up other contracts.

- The report can be presented to the management team and contribute to top management commitment
- The report should contain information about what was controlled, what documentation that was obtained, any findings, the requirements that were set, and the deadlines that were given
- Any letters, meeting minutes, and emails relating to the case should be included as attachments to the report
- The report should be filed in connection with the contract
- The completed control will provide a basis for any subsequent control later. If breaches on the regulatory requirements and the contract are uncovered, it would be natural to consider carrying out a more extensive control, with or without self-assessment from the supplier

#### **THE ORGANISATION MUST:**

- **Document the process by filing a report after completing a control. File the report as an attachment to the contract.**

#### **THE ORGANISATION OUGHT TO:**

- Include all relevant written communication as attachments to the report
- Send the completed report upwards through the system (top management commitment)
- Use the report as a source in future risk assessments
- Use the report to assess the resource use for future follow-ups
- Consider a new control with or without new self-assessment from the supplier to verify the conditions that were corrected and possibly control other conditions



**Difi's template for post control reports**  
**[www.anskaffelser.no/sosial-dumping](http://www.anskaffelser.no/sosial-dumping)**



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