

# Labour Exploitation and Public Procurement

Guide for risk management in national supply chains



Anni Lietonen  
Natalia Ollus

HEUNI



This guide has been prepared by the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI) commissioned by the Ministry of Finance. Anni Lietonen and Natalia Ollus were responsible for preparing the guide. The guide has been prepared in connection with the Action plan for effective public procurement (i.e., the Procurement Finland Strategy), coordinated by the Ministry of Finance and the Association of Finnish Local and Regional Authorities. The project was built on the objectives of the Social Sustainability Group operating as part of the Procurement Finland Strategy, which include the promotion of human rights in public procurement and respecting fundamental rights at work. By combating labour exploitation and human trafficking as part of public procurement procedures, contracting units can contribute to preventing fraudulent activities and crimes, and to promoting the implementation of human rights and respect for the fundamental principles of working life.

The proposed measures, views and interpretations presented in this publication represent the authors' views and do not necessarily reflect the official position of the parties involved in the implementation of the Procurement Finland strategy. This guide has been prepared for the public procurement context in Finland, and for the application of Finnish laws and instructions. However, public procurers and businesses from other countries can also benefit from the content of the guide. **When implementing the recommendations in the guide, public contracting entities must ensure that their measures comply with the national procurement and data protection legislations, the Act on the Contractor's Obligations and Liability when Work is Contracted Out, including other key obligations.**

When preparing the guide, we collected feedback from several professionals working with different types of public procurement. Thank you all for your support and feedback! We would also like to thank all professionals involved in the work of the Social Sustainability Group. The following organisations and representatives of public contracting entities have been more closely involved in providing comments on the guide; City of Espoo, Hansel Oy, the City of Helsinki, the Hospital District of Helsinki and Uusimaa (HUS), the Public Procurement Advisory Unit (JHNY), the Regional State Administrative Agency (Occupational Safety and Health) and the Prime Minister's Office (VNK).

**Authors:**

Anni Lietonen and Natalia Ollus

**Layout and illustrations:**

Aili Pääkkönen and Aleksandra Anikina

The online sources used in the publication have been visited in August and September 2021. Instead of exact URL-addresses, we have referred to the website admin and page title. This way, the sites in question can also be found using search engines. Most of the original sources are in Finnish, but when possible, the English language versions are used in this publication.

HEUNI Report Series N° 98c

Printed in Helsinki 2021



ISBN: 978-952-7249-55-0 (PDF)

ISBN: 978-952-7249-56-7 (paperback)

ISSN: 1799-5590

ISSN-L: 1237-4741

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## Introduction

**OVER THE PAST DECADE**, businesses have in many ways improved their efforts to promote human rights through sustainability measures. Simultaneously, political interest in strengthening corporate social responsibility has increased along with understanding of the perspectives of corporate responsibility (CSR) and human rights responsibilities (BHR) as part of the core functions of companies. Also, the demands of consumers and investors related to transparency and sustainable business activities have been on the rise. At the same time, increasing labour mobility and the use of complex supply chains have been accelerating labour market transformation across the globe. Many companies and public actors are committed to avoid causing or contributing to adverse human rights impacts through their own activities, especially when the supply chain extends to high-risk countries outside Europe. However, studies have shown that labour exploitation and human rights violations also occur in European working life, including in Finland, in sectors such as construction, agriculture, cleaning and catering.<sup>1</sup> Also, severe forms of exploitation including human trafficking for forced labour have been identified in Finland. Exploitation is often motivated by making financial profit and it involves posted or migrant workers arriving in Finland whose lack of knowledge of local practices or lack of language skills are exploited in various ways.

Although human trafficking is more often observed in larger cities, it also occurs in smaller municipalities. The actual extent of exploitation is difficult to assess, as only a small share of all cases come to the attention of the authorities. Yet, in recent years, organisations, authorities and trade unions have identified an increasing number of cases of exploitation in Finland, ranging from underpayment to work discrimination, extortion and even human trafficking. The identification

<sup>1</sup> e.g. FRA. (2015): [Severe labour exploitation: workers moving within or into the European Union. States obligations and victims' rights](#). Luxembourg: Publications Office of the European Union; Jokinen, A., Ollus, N. ja Aromaa, K. (2011): [Trafficking for Forced Labour and Labour Exploitation in Finland, Poland and Estonia](#). Helsinki: Heuni Publication Series No. 68; and Ollus, N. (2016): [From Forced Flexibility to Forced Labour: The Exploitation of Migrant Workers in Finland](#). HEUNI Report Series No. 84, Helsinki: HEUNI.

of cases is challenging partly because victims of exploitation do not always know that they are being exploited or do not want to bring problems to light in fear of punishment or other negative consequences. Therefore, the prevention of labour exploitation and related phenomena such as the grey economy, corruption, and social dumping, as well as financial crime in the Finnish labour market, require extensive cooperation between various actors, including those engaged in public procurement. This guide aims to support public procurers along with the entire business sector in preventing labour exploitation in Finland.

**By preventing labour exploitation and human trafficking as part of public procurement procedures, abuse and more serious crimes can also be prevented. Preventative measures also promote human rights and the respect for fundamental principles of working life. This improves fair competition between companies, promotes equality and equal treatment, as well as ensures legal working conditions for all persons working in Finland.**

At the time of writing this guide, there are several ongoing governmental measures in Finland to address labour exploitation and trafficking and to improve the status of victims of labour exploitation. Measures include increasing the resources of the Occupational Safety and Health Authority by adding several new inspectors specialised in monitoring the working conditions of migrant workers, the creation of a new team at the Helsinki Police Department investigating human trafficking offences, a new action plan against trafficking for 2021-2023, a renewed strategy and action plan for combating the grey economy and economic crime and for 2020-2023, and amendments to the Aliens Act that entered into force on 1 October 2021, which will extend the worker's right to work and the imposition of stricter sanctions on employers for exploitation. The current Government Programme states that sustainability requirements for procurement will be increased. Furthermore, the Government Programme includes the enactment of a binding Act on Corporate Liability for corporations and companies in Finland. Finland has thus introduced many new and structural changes to address labour exploitation

### The risk of labour exploitation is prevented when:

- 1) the contracting entity is aware of who is working and under which terms and conditions, and knows whether the supplier complies with Finnish laws on insurance, wages, work permits and taxes
- 2) the employees know their rights and are aware of how and where to get help if necessary
- 3) the employees can safely report problems without repercussions
- 4) the parties commissioning work and contract partners know what exploitation is, understand its possible connections to other abusive conducts and crimes, and know how to react when suspicions arise.

## Central terminology

**Public contracting entities** refers to organisations within public administration, such as the state, the authorities in municipalities and joint municipal authorities, the Evangelical Lutheran, and Orthodox Church, as well as their parishes and other authorities, state enterprises, bodies governed by public law and any party that has received funding for procurement from the aforementioned parties. Public procurement refers to procurements that fall within the scope of procurement legislation but also to those that fall below the national thresholds laid down in the Act.

**Labour exploitation** refers to cases where the person is subjected to poor terms of employment, is working long hours with wages below the national limits (underpayment) and in unsafe working conditions and has little choice or ability to change their situation. Depending on the severity of these situations, cases can be defined as different types of labour offences, human trafficking or related offences. For example, underpayment alone is not a criminal offence in Finland, but if in addition to underpayment, a person works in poor working conditions and long hours, this can be defined as extortionate work discrimination.

**Human trafficking for labour exploitation** refers to severe exploitation of a person for economic gain. The exploitation of a person may be classified as human trafficking if it includes restriction of their freedom, use of force, threats, debt bondage, misleading, false promises or they have been psychologically pressured.

**Forced labour** refers to any work or service in which a person is required to work under threat of punishment. In Finland, forced labour is one of the forms of exploitation in the criminal offence of human trafficking.

**The grey economy (also known as shadow economy)** refers to companies' efforts to achieve financial gains by neglecting statutory obligations and payments. The grey economy can also include financial/economic crimes or crimes related to violations of the labour code and therefore be linked also to labour exploitation.

**Migrant workers** refer to both non-EU migrants (including asylum seekers and refugees) and EU citizens who work outside their country of origin.

**Subcontracting and supply chains** refer to arrangements where the supplier outsources part(s) of the work agreed upon in the contract to subcontractors, and/or labour is procured by means of leasing personnel from agencies or other flexible fixed-term employment methods, e.g using posted workers to support the production of materials or services.

**Corporate Social Responsibility (CSR)** refers to integrating social and environmental concerns into business operations and interactions with their stakeholders. In practice, ensuring so-called **social responsibility** in this publication means that the company ensures that its own employees and its subcontractors or employees in the supply chain are treated appropriately and in accordance with applicable legislation and collective agreements between social partners. At the heart of social responsibility is respect for human rights, i.e., a responsibility to ensure that business does not pose negative impacts on people or communities.

**Due diligence** refers to actions that aim to identify and prevent adverse effects resulting from an organisation's own activities, as well as monitoring and communicating the effects of the actions.

**Sustainable procurements** generally describe procurements that take environmental, social and economic aspects and obligations into account. The term **socially responsible procurement** is used to narrow down procurements that take into account the impacts of procurements on different groups of people and communities, including taking labour law aspects into account. In this publication, the term refers in particular to taking into account the fundamental principles of work and human rights.

**Fundamental principles of work and human rights** refer to specific internationally agreed rights and obligations to which states are committed. In Finland, fundamental and human rights are based on the UN human rights agreements and ILO obligations related to work, and these are supplemented by the European Convention on Human Rights and other EU regulations concerning labour and fundamental rights. Adverse human rights impacts refer to situations in which some action impairs or prevents a person from enjoying his or her own human rights.

**Workers' rights** are defined in the UN Declaration of Human Rights and they refer to compliance with national labour law obligations. Both employers and the state are responsible for these, for example, through the safeguarding of fundamental rights. For example, businesses must uphold the freedom of association and support the effective prevention of forced labour and child labour and prevent discrimination in the labour market and in professional practice.

**Social dumping** refers to underpayment and sub-standard working and/or living conditions concerning certain workers, often of migrant origin. Social dumping means that the working conditions of migrant workers are poorer than those stipulated in national law or in collective agreements

# PART I: Background



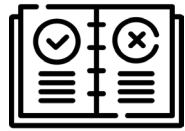
## About this guide

The purpose of this guide is to support persons working with public sector procurement to take into account the risks of labour exploitation as part of their procurement procedures. We hope that the publication will increase practical and tangible measures to prevent labour exploitation and encourage discussion on compliance with the principle of due diligence and the implementation of sustainable public procurement. Businesses can also benefit from this guide by applying it into their own operations. In preparing this guide, we have utilised previous instructions and guides on how to prevent labour exploitation and human trafficking prepared by HEUNI and other organisations. There is a list of relevant reference documents at the end of this guide, including a link to the seminal Guide on the Prevention of Human Trafficking in Supply Chains through Public Procurements published by the Organisation for Security and Cooperation in Europe (OSCE). However, no guidelines for the public sector on how to combat labour exploitation that takes place in Finland or Europe have existed before. Thus, this guide is not only relevant nationally but is also a relevant addition to international discussions.

This guide presents measures for the prevention of labour exploitation and trafficking across different phases of the procurement procedure, as well as means for contract monitoring. The guide also provides a summarised description of the phenomena of labour exploitation and provides instructions for public sector professionals on how to react when exploitation is detected, or suspicions arise:

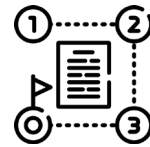


Objectives of the responsibility measures presented in the guide:



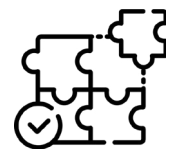
**Phase 1 - Principles of sustainable procurement and organisation of activities s. 28**

The contracting entity, all the way to its management, in sustainability strategies and guidelines commits to preventing local human rights problems and allocates the necessary resources to this. Units working with procurement will assist in identifying the resources needed to prevent hidden labour exploitation.



**Phase 2 - Planning and preparation the procurement s.32**

The contracting entity plans and introduces measures for the prevention of exploitation as part of procurements in risk sectors. The contracting entity will include themes related to the prevention of labour exploitation in its market analysis and will request feedback on the competitive tendering through market dialogue, which will ensure the effectiveness of the requirements concerning the object of the procurement and the terms of the contract.



**Phase 3 - Competitive tendering and award criteria s.35**

Public contracts will include suitability requirements for the supplier, obligatory contract terms and requirements for supervising subcontracting under certain conditions, which will help to prevent labour exploitation.

The contracting entity is familiar with the exclusion criteria associated with labour exploitation and will specify reasonable penalties for contractual violations, such as the use of sanctions, termination terms or complaints, and other corrective measures.



**Phase 4 - Contract monitoring s.46**

The contracting entity will define the objectives and create guidelines for the implementation of monitoring of working conditions from the perspective of preventing exploitation.

The organisation will draft an operational model for persons working with the contract on how to act when suspicions arise.

## Labour exploitation and human trafficking in the Finnish labour market

Labour exploitation and its most severe form human trafficking occur all over the world, and Finland is no exception.

**Labour exploitation occurs especially in low-paid labour-intensive sectors which employ migrant workers, such as cleaning, construction, catering and services industries. Irregularities have also been detected in home care, agriculture, logistics and transport.<sup>2</sup>**

Often the exploitation of migrant workers is hard to detect as everything might seem legal on paper, but in reality, the working conditions might be severely exploitative.

**Human trafficking and labour exploitation refer to a situation in which a person is forced into working without having a real opportunity to refuse or to stop working without facing serious negative consequences. Drawing the line between less serious forms of exploitation and more severe forms can be challenging.** The more common forms of exploitation include, e.g., underpayment and non-payment of overtime compensation. Exploitation becomes more serious when debts, recruitment fees, or costs such as accommodation, transport or work equipment are reduced from the pay or when salary payments are withheld. In most of the severe cases of exploitation encountered in Finland, exploitation has been linked to the person's dependent position in relation to the employer, his/her insecure status, the person having been misled, or his/her lack of knowledge of appropriate working conditions.<sup>3</sup> Trafficking offences can also include physical violence or deprivation of liberty; however, this is not always the case.

<sup>2</sup> E.g. Ollus, N., Jokinen, A. and Joutsen, M. (2013): [Exploitation of migrant workers in Finland, Sweden, Estonia and Lithuania: Uncovering the links between recruitment, irregular employment practices and labour trafficking](#). Helsinki: Heuni Publication Series No. 75; The Assistance System for Victims of Human Trafficking (2021): [Semiannual report of the Assistance System for Victims of Human trafficking 1.1.–30.6.2021](#); Regional State Administrative Agency (2021): [Työsuojeluviranomainen valvoo kotitalouksia, jotka käyttävät ulkomaista työvoimaa](#) (8.6.2021) | Aluehallintovirasto (sttinfo.fi);

<sup>3</sup> Ylinen, P., Jokinen, A., Pekkarinen, A.-G., Ollus, N., Jenu, K.-P. ja Skur, T. (2020): [Uncovering labour trafficking. Investigation tool for law enforcement and checklist for labour inspectors](#). Helsinki: HEUNI Publication Series No 95a.

**Examples of labour violations include:** Underpayment, overlong working hours, minimal or lack of breaks, inadequate equipment, inappropriate treatment related to employment conditions.

**Examples of labour offences (crimes similar or close to human trafficking):** Situations related to discrimination and extortion where the employee has unfavourable terms of employment (pay and working hours) compared to those of other employees.

**Examples of severe exploitation/forced labour or human trafficking related to labour exploitation:** Exploitation is linked to misleading a person or by taking advantage of a person's vulnerable position and the use of different means of control, such as social isolation, indebtedness, the partial or total retention of pay, the confiscation of identity documents and/or threats related to a losing one's residence permit.

#### Example 1: A case of labour exploitation at a public project's construction site

*In 2020, the TV-programme MOT reported on cases of exploitation and the poor treatment of migrant workers in connection with the renovation of the Olympic Stadium in Helsinki. Construction workers had not received statutory pay for overtime, they had been threatened, and when they tried to bring problems to light, they were dismissed, laid off or even sent death threats. One interviewed Latvian man lived with his colleagues at the construction site in containers in inhumane conditions. After the Finnish Construction Trade Union intervened, 60 employees were paid their missing salaries, but many lost their jobs. The City of Helsinki and the State had procured the contract. The former Minister of Culture and Sport, Paavo Arhinmäki was contacted by the journalists, and he called for the need to include ethical criteria in all public projects. Such criteria were missing from the procurement agreement for the Olympic Stadium*

Source (in Finnish): Salminen, R. and Stolzmann, J. 30.3.2020. [The real price of the Olympic Stadium](#). MOT yle.fi; (Stolzmann, J. and Takala, H. 31.8.2020. [In the spring, MOT reported on the exploitation of the builders at the Olympic Stadium's construction site - Andris is still waiting for his wages, Ilir who was threatened and fired says he has lost all hope](#). MOT yle.fi.

**The terms 'human trafficking', 'forced labour' or so-called 'modern slavery' usually evoke strong images of both victims and perpetrators of exploitation, which might make it difficult to grasp what exploitation might look like in real life. In concrete terms, human trafficking refers to controlling others for financial gain by exploiting a person's vulnerable position and their lack of knowledge of their rights.**

It may be difficult or impossible for victims of exploitation to seek help. This may be due, for example, to language barriers, a lack of information and contacts outside the workplace, or due to a dependent position in relation to the employer, for example due to debt, and fear of financial difficulties and other consequences. In principle trafficking could be identified by anyone. In practice, however, the possibility of professionals working with procurement to identify cases are limited. Due to the challenges associated with identification, the emphasis of the tools presented in this guide is on prevention of all forms of exploitation – both severe, which can be defined as crimes or human rights violations, and less severe forms of exploitation. Relevant offences include human trafficking and aggravated human trafficking (Criminal Code, Chapter 23 3(a), as well as extortionate work discrimination (Criminal Code, Chapter 47 3(a)), work discrimination (Criminal Code, Chapter 47 3), employment agency offence (Criminal Code, Chapter 47 6), unauthorised use of foreign labour (Criminal Code, Chapter 47 6(a)), usury (Criminal Code, Chapter 36 6), and aggravated usury (Criminal Code, Chapter 36 7).

## Human rights due diligence as part of socially sustainable procurement

The importance of preventing human trafficking and labour exploitation as part of public procurement can be justified as part of the promotion of human rights and compliance with international contractual obligations. The Universal Declaration of Human Rights, the ILO International Labour Standards, as well as the ILO Protocol of 2014 to the Forced Labour Convention define the basic obligations relating to work and their application in ILO member states. The Finnish Government is committed to ensuring the implementation of fundamental and human rights also as part of the Finnish Constitution. However, agreements and laws alone do not guarantee the realisation of human and fundamental rights. We therefore need businesses, the public sector and its partners to actively get involved in respecting labour and human rights in their own activities.

Over the past decade, social sustainability measures have taken steps forward in various countries in the form of binding legislation, and increased attention to due diligence and an emphasis on human rights responsibility. There are many links between corporate responsibility and public sector responsibility, even though the operating environment and the Act on Public Procurement and Concession Contracts control to some extent how sustainability measures can be applied in public procurement. Corporate social responsibility measures related to human rights in the public and private sectors are largely based on the UN Guiding Principles on Business and Human Rights (UNGPs), which aim to clarify what human rights due diligence refers to and what obligations it has for the state and businesses.<sup>4</sup>

**In practice, public contracting entities and businesses demonstrate that they are responsible actors when they follow an appropriate due diligence process, which includes the identification and assessment of adverse effects; the prevention of adverse effects; the monitoring of measures and results, as well as, communication related to the processing of impacts; and coordination of corrective measures.<sup>4</sup> An essential element of human rights due diligence is the responsibility to respect the rights and equal treatment of migrant workers, by taking into account also the conditions of persons employed through national subcontracting chains.**

## Key regulations

To prevent labour exploitation, it is essential to ensure that procurement complies with labour law obligations. These obligations are based on national laws and collective agreements that are in line with EU law and international agreements, such as the ILO Declaration on Fundamental Principles and Rights at Work. The Act on Public Procurement and Concession Contracts (1397/2016) is a key guide for the procurements that exceed the thresholds to apply the law in Finland, in which sustainability is incorporated in clauses related to environmental, social and labour law obligations.

<sup>4</sup> United Nations Human Rights Office of the High Commissioner (2011): [Guiding Principles on Business and Human Rights](#). Vienna: United Nations

<sup>5</sup> OECD (2018): [OECD Due Diligence Guidance for Responsible Business Conduct](#).

Socially sustainable public procurements are furthermore supported by national action plans and binding obligations such as labour legislation, legislation on the obligations and liability of the contractor, and collective agreements that regulate the rights of workers. In addition, authorities, organisations and employers' associations play an important role in the monitoring and promotion of rights. Risk sectors also have sector-specific practices and agreements that contribute to the implementation of due diligence.

**In public procurement, social sustainability goals can be promoted within the procurement procedure by effective monitoring of implementation of fundamental labour rights or by improving management and transparency of subcontracting chains especially in risk sectors.**

However, the general principles governing public procurement as laid down in the Act on Public Procurement and Concession Contracts (section 3, subsection 1) must be taken into account in all sustainability measures. This means that contracting parties must be treated equally and in a non-discriminatory manner in line with the principles of transparency and proportionality.

The Act on Posting of Workers (447/2016), amended in 2020, specifies obligations for employers, the main contractor and the builders alike. When planning procurements and monitoring compliance with contract terms, a contracting entity familiar with employers' obligations can react if it finds that the employer or main contractor has not complied with the requirements related to occupational safety and the salary level.

**For example, the contractor must ensure that the posting company has appointed a representative in Finland, who posted workers can contact. In the construction sector, the main contractor, as well as the contracting entity in the role of the builder, are obliged, at the request of a posted worker to sort out inadequate payments by the posting company.<sup>6</sup>**

<sup>6</sup> Occupational Safety and Health Administration (2021): [Posted worker | Occupational safety and health \(tyosuojelu.fi\)](#)

As a new obligation at EU level, since December 2021, states and companies will be required to take into account the protection of persons who report breaches of Union law within the scope of national procurements (2019/1937, the EU Whistleblower Directive). Its purpose is to ensure that a whistleblower who, in the course of his or her work, detects or suspects activities contrary to public interest can safely report the matter. The Ministry of Economic Affairs and Employment is responsible for implementing the directive in Finland. In the public sector, the directive obliges central government, regional government, municipalities, and other legal persons governed by public law to introduce an internal reporting channel. The exception is municipalities with fewer than 10,000 residents or with fewer than 50 employees or other legal persons in the public sector.<sup>7</sup>

**The Government's Chancellor of Justice will act as a centralised external reporting channel. Organisations bound by the Directive may broaden the purpose of the reporting channel into, for example, an ethical channel, where reports can also be submitted by persons and companies supplying procurements on such things as compliance with labour law obligations.**

#### **Act on the Contractor's Obligations and Liability when Work is Contracted Out**

In Finland, the Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006), (from here on referred as the Act on the Contractor's Obligations and Liability) obliges contracting entities and their contracting partners to request reports and clarifications laid down in the Act from their subcontractors, as well as from their contracting partners providing temporary agency workers. Compliance with the Act is supervised nationwide by the Occupational Safety and Health Division at the Regional State Administrative Agency for Southern Finland, which also provides advice if necessary. Businesses and the public sector are obliged to comply with the Act when their contracting entities procure construction, repair, care or maintenance work, temporary agency workers or when, through subcontracting or service procurement, employees of another contracting party come to the premises of the contractor. The Act also applies to contracts concluded with a foreign company when the work takes place in Finland.<sup>8</sup>

<sup>7</sup> Parliament of Finland (2021): [Information on the implementation of the Whistleblower Directive \(eduskunta.fi\)](https://eduskunta.fi)

<sup>8</sup> Occupational Safety and Health Administration (2021): [Agreement with a foreign company – OHS \(tyosuojelu.fi\)](https://tyosuojelu.fi)

The Occupational Safety and Health Administration website provides more information on requirements and, for example, on how the documents requested from abroad correspond to the required reports [Foreign employee – OSH \(tyosuojelu.fi\)](https://tyosuojelu.fi) and [Contractor's obligations and liability – OSH \(tyosuojelu.fi\)](https://tyosuojelu.fi). The website also provides information on the Contractor's obligations in Swedish, English, Estonian, Polish, and Russian and can be forwarded to contracting partners. You can also visit the website to test your knowledge (in Finnish) on the application of the Act on the Contractor's Obligations and Liability. [Test for municipal actors: Do you know the Contractor's responsibility? – Occupational safety and health \(tyosuojelu.fi\)](https://tyosuojelu.fi)

The Contractor must request the reports and clarifications referred to in the Act whenever the value of a procurement is at least EUR 9,000 or when it concerns temporary agency work lasting more than 10 working days.

**An organisation can also instruct their own contracting entities to request the reports and clarifications laid down in the Act for every procurement done in risk sectors even when value of the procurement is less than the threshold.**

Certain aspects of the Act on the Contractor's Obligations and Liability will be fulfilled automatically in procurements exceeding the EU thresholds, as they overlap with the terms of compatibility in the European single procurement document (ESPD). It should be noted that according to the law, the reports and clarifications must be less than three months old at the time the contract was concluded and must be retained for at least two years after the end of work. According to the Act on the Contractor's Obligations and Liability, the requested reports and clarifications can in practice be requested in Finland by means of a "Reliable Partner"-report if the contractor has joined the [vastuugroup.fi](https://vastuugroup.fi) -service.

**According to the Act on the Contractor's Obligations and Liability when Work is Contracted Out, the following documentation must be checked from the contracting party prior to signing the contract:**

- Being registered in the Prepayment Register, Employer Register and as VAT-liable in the Value Added Tax Register, an extract from the Trade Register and a report on tax payment status.
- Certificates demonstrating that the employer has purchased employee pension insurance premiums and on the payment of pension insurance contributions, or proof that the payment agreement on outstanding pension insurance premiums has been made.
- An account on the collective agreement or the principal terms of employment applicable to the work.
- An account on the organisation of occupational health care services in Finland.
- Report on the determination of the social security of posted workers, i.e., pension and accident insurance.
- Report on the organisation of statutory accident insurance, in contracts related to construction activities.

**What information is not included in the reports referred to in the Act on the Contractor's Obligations and Liability when Work is Contracted Out?**

- Information on whether the contracting partner will pay wages and wage supplements and whether the hours worked correspond to the hours paid, i.e., will the contracting partner comply with the collective agreement in practice.
- Are the work permits of migrant workers in order?
- The obligation to check the documentation only applies to the contractor's own contracting partner. If the contracting partner further subcontracts the work to another subcontractor, it is not known how that employer will manage its obligations.
- If persons are not employed by the contracting partner, but by another company, how will the obligations be fulfilled?

## The risk of being involved in labour exploitation in the public sector

A large share of public procurements is made in business sectors where labour exploitation has been detected. Contracting entities (incl. suppliers) are at **risk of being unintentionally involved** in cases of exploitation and/or human trafficking through the use of, e.g., posted workers and complex supply chains and outsourcing arrangements, and cascade subcontracting including several layers, which make it difficult to monitor working conditions and terms of employment. For this reason, the prevention of hidden forms of exploitation and human trafficking should be linked to tackling the wider phenomenon of exploitation, which includes prevention of the grey economy, unfair competition, corruption and social dumping.

Practices that violate the rights of migrant workers can also be hidden behind shell companies. Oversight authorities have observed that the number of foreign light entrepreneurs/self-employed migrant workers in subcontracting chains has been increasing. These seemingly legitimate business arrangements have the risk of disguising bogus self-employment.<sup>9</sup> The entrepreneurship may be related to circumvention of employer obligations and, at worst, they may involve discrimination or exploitation in different degrees if a person is forced to register as an entrepreneur against his or her own will and is unable to personally influence the amount of work or the selection of assignments.

Fraudulent activities related to public procurements also involves other risks. If misconducts become public, the **reputation** of the organisation **may suffer**, or the procurement may lead to **serious quality and safety problems and thus financial losses**. Parties engaged in public procurement have the **opportunity to be forerunners in human rights responsibility matters and lead by example**. Public procurement can be designed in such a way that it includes an incentive for businesses to incorporate responsible business practices and risk-based due diligence in their supply chains. Tenders which include principles of policies for the prevention of labour exploitation can also increase awareness of bidders on the topic. However, when implementing responsibility measures, the impact of competitive conditions on companies of different sizes should be assessed in each procurement.

<sup>9</sup>Regional State Administrative Agency for Southern Finland (2020): [Employers and contractors liability | Grey economy & economic crime \(vero.fi\)](#)



## PART II: Sustainable procurement and responsibility at different stages of the procurement procedure

The following sections outline concrete measures that contracting entities can implement to ensure accountability of public spending through preventing adverse human rights impacts and labour exploitation in their national procurements. The measures are categorised according to the four main phases of the procurement procedure:

1. principles of sustainable procurement and organisation of activities,
2. planning and preparation of the procurement,
3. tendering and award criteria, and
4. monitoring during the contract period.

The main content and scope of the responsibility measures presented in the guide have to be scaled and tailored according to the operating environment, the value and subject of the procurement, and to the size and structure of the contracting entity.

### Phase 1 – Principles of sustainable procurement and organisation of activities

Thus far, the topic of labour exploitation and human trafficking is largely missing from national sustainability policies or action by Finnish businesses, as well entities participating in public procurement. This section lists various principles and standards that enable public contracting entities to strengthen their efforts to prevent labour exploitation and human trafficking to ensure that the same standards are used by all parties taking part in a procurement. These principles, listed on the next page, may be integrated into already existing anti-grey economy, anti-corruption programmes, purchasing policies, or developed further into independent strategies, policy objectives, ethical guidelines, commitments and/or minimum accountability requirements. It is important that the entire organisation, including its management, is committed to the chosen principles, especially in procurements related to high-risk sectors.

### Example 2: Welsh guidelines for parties engaged in public procurement to promote decent work in supply chains

*The Code of Practice: “Ethical employment in supply chains’ (2017) for combating labour exploitation” published by the Government of Wales, is a good example of promoting the principles of ethical employment in the public sector. Welsh public sector organisations, businesses participating in public procurement and organisations using public funds must commit to the 12 principles listed in the code of practice. The aim is to prevent labour exploitation nationally, to support legal and ethical employment practices in the supply chains of public sector procurements, and to increase transparency. Such commitments are a good addition to legal obligations and help determine what organisations and companies are expected to do to prevent labour exploitation at local level.*

Source: Welsh Government (2017): [Ethical employment in public sector supply chains: guidance](https://gov.wales/guidance/ethical-employment-in-public-sector-supply-chains) (gov.wales).

#### General examples of principles for prevention of labour exploitation and human trafficking in line with the human rights due diligence process

- Our organisation is committed to promoting human rights due diligence as provided in internationally recognised general guidelines and principles, such as the OECD guidelines for due diligence, and/or the Global Compact and the UNGP.<sup>10</sup>
- Our organisation is committed to preventing labour exploitation and human trafficking in national procurements, especially in high-risk sectors, with measures such as promoting decent work for all, rights at work, i.e., work in accordance with sector-specific collective agreements.
- Our organisation increases efforts to raise awareness of labour exploitation and human trafficking, as well as the rights of migrant workers in Finland.
- Our organisation carries out systematic risk assessments to map out how large the risk of labour exploitation and trafficking is.
- Our organisation will take into use specific measures, such as utilising minimum suitability requirements and criteria specified in the contract notice, in public procurements where there is a risk of labour exploitation and human trafficking.

- Our organisation will increase the transparency of subcontracting and supply chains, especially in procurements where risk of labour exploitation is significant and increase the supervision of the terms and conditions of employment, contract terms of procurement, and subcontractors used by them, and develop the monitoring of reports under the Act on the Contractor's Obligations.
- Our organisation ensures systematic intervention in detected fraudulent activities, takes care of corrective measures, and aims to prevent recurrence of cases.
- Our organisation strives to ensure that migrant workers who are employed through the subcontracting chain have been familiarised with the employee's rights and general terms of employment in Finland, as well as ways on means for reporting abuses (possibly anonymously) they have experienced either via a centralised external reporting channel (the whistleblowing channel) or to the organisation's internal reporting channel, if it has been expanded into a so-called ethical channel that can also be used for submitting reports related to occupational safety and health, or a contracting partner's ethical channel.
- Our organisation encourages its own staff to report their observations on inappropriate and inadequate working conditions (if possible, also anonymously) in accordance with the established operating and monitoring procedures, and we ensure a systematic process to handle the reports made to those channels.
- Our organisation will communicate openly on the impacts of measures taken to prevent labour exploitation and promote dialogue and exchange of information with service providers and authorities in order to prevent labour exploitation in Finland.

#### From words to deeds

When clear principles, policies, and objectives are set for the prevention of labour exploitation, the next step is to define who are the designated entities and persons responsible for the implementation of the objectives. Clear roles and instructions at different stages of the procurement procedure promote sustainable procurements. It must be determined who supervises the content of the contracting entity's internal orientation/introduction to work and ensures that sustainability principles are part of the orientation. An effort can be made to outline specific roles, determine the competence needs of persons working with procurements and to increase the ability of staff to identify the fraudulent activities they may encounter, such as undeclared labour, examples of the grey economy and labour exploitation.

<sup>10</sup> Ministry of Economic Affairs and Employment in Finland: [Key guidelines on CSR – Ministry of Economic Affairs and Employment \(tem.fi\)](https://tem.fi/en/key-guidelines-on-csr)



It should be clear within a contracting entity how and to whom responsibilities are divided at the level of management, in the responsible unit and in other activities related to the different phases of the procurement procedure. In connection with procurements in risk sectors, it may be necessary to establish responsible task(s) or working groups that update and monitor the implementation of new policies. It is also important to plan and implement possible corrective measures in case labour exploitation is detected. In this context, corrective measures refer to actions such as cooperation with authorities, occupational safety and health authorities, associations or organisations, or the introduction of other means presented in this guide.<sup>11</sup> Proactive management of potential and actual adverse human rights impacts should be a continuous learning process where the company reacts to risks and develops processes in response to identified misconducts.

If new policies and measures are introduced in procurements to prevent labour exploitation, their progress must be monitored and assessed both in the short and long term.

**It is also advisable to highlight these principles and ethical guidelines already at the beginning of procurement procedures and include them as part of invitations to tender.**

It is important to communicate about measures to prevent labour exploitation openly and systematically both within the organisation and to external stakeholders.

## Phase 2 – Planning the procurement

Considerations of responsibility can be taken into account already in the planning and preparation phase of the procurement. When planning procurements where the prevention of labour exploitation and trafficking is included, it is important to ensure that the persons have familiarised themselves with the phenomenon, for example by reading this guide and/or additional materials that are listed in this guide. If, the risk assessment (p. 25), leads to the conclusions that the procurement involves a risk of labour and human rights violations, it is recommended that contracting entities include clauses to their terms and conditions of tendering and contracts to prevent or reduce these risks (see page 35 in chapter 3). The next section discusses how to improve the prevention of labour exploitation in the planning phase as part of the market dialogue.

### Market dialogue and market consultation

Consulting suppliers can provide valuable insights into how the planned responsibility measures would work in practice. For example, the risk of overly demanding suitability requirements may make it unreasonably difficult, for SMEs in particular, to implement them, and this may affect their opportunities and motivation to participate in competitive tendering. The objective of the market dialogue is to ensure the success of the competitive tendering process and to ensure that the parties understand the minimum requirements of the invitation to tender, and that the social conditions do not impose an unreasonable burden for the companies (administrative burden or timewise). A dialogue can also be used to collect feedback, opinions and experiences of suppliers on the possible implications of planned responsibility measures and realisation of workers' rights.<sup>12</sup>

**The market dialogue will also encourage suppliers to develop a more open discussion culture and at best increase the awareness of companies concerning risks of labour exploitation in local supply chains.**

<sup>11</sup> Ministry of Employment and the Economy of Finland (2014): [National Action Plan for the Implementation of the UN Guiding Principles on Business and Human Rights](#). MEE Publications 46/2014.

<sup>12</sup> KEINO (2020): [Guide for conducting a market study \(hankintakeino.fi\)](#).

One example of market dialogue and consultation is to ask suppliers to assist in gaining an **understanding of the general price level of a procurement so that exceptionally low tenders can be identified at the tendering phase**. Naturally, calculating an exact price in advance for e.g., a cleaning or a building contract may be challenging. However, identifying the sector's most common pricing models and the principles of cost formation, and taking these into account in both the invitation to tender and the contract terms in order to avoid unexpected costs to be invoiced later, can help in identifying possible risks related to low tenders.

In Finland, a market dialogue can be initiated by, e.g., publishing a request for information in the HILMA notification channel ([hankintailmoitukset.fi/en/](http://hankintailmoitukset.fi/en/)). The dialogue can be carried out by organising an information session, requesting feedback on tendering documents and/or by meeting suppliers. The contracting entity may seek advice from independent experts, other contracting entities or authorities (e.g., the tax authorities, occupational safety and health or labour market organisations), which can also be used to resolve questions related to the subject of the procurement and the requirements related to it, and the selection criteria for tenders. (Act on Public Procurement and Concession Contracts, section 65) The following lists contain questions related to the prevention of labour exploitation that can be raised in the dialogue with companies in a specific sector.

The market dialogue can also be used to uncover possible exceptional circumstances under which the terms of the contract (as described in the next paragraph) may be waived. There is always the possibility that the procurement includes exceptional circumstances related to the complexity of the procurement, for example demanding cleaning or construction sites for which the contracting partner needs special external expertise. It is important that the reasons are valid and do not lead to an increase in the risk of labour exploitation. However, reports under the Act on the Contractor's Obligations and Liability must always be requested even in exceptional circumstances. The following sections demonstrate possible commitments that can be included in tendering, which aim to ensure accountability and increase transparency related to management of subcontracting chains. The chapter also includes possible terms and conditions for potential contractual partners specifically aimed at preventing labour exploitation.

**During the dialogue, suppliers may be asked for views and feedback on the prevention of labour exploitation in general:**

- How well is labour exploitation generally prevented in the sector/how are the labour rights of migrant workers secured in the sector? Has the risks of labour exploitation and human trafficking at the national level been discussed within the sector? How are labour and human rights respected as part of social sustainability and CSR measure within the sector?
- What kind of policies, guidelines, strategies, or operating methods do the suppliers have in place to prevent labour exploitation and human trafficking of migrant workers, for example in employment and contract activities or in relation to subcontracting?<sup>13</sup>
- What amount of additional resources do the tenderers estimate will be spent on fulfilling the responsibility requirements added to the procurement (this refers to obligations other than those referred to in the Act on the Contractor's Obligations and Liability)?
- What support measures would suppliers need from the contracting entity to achieve the responsibility requirements? Is the administrative burden reasonable in relation to the value of the procurement and the size of the company?

**During the dialogue, suppliers may be asked to provide views and feedback on the practical implementation of the procurement:**

- Which services or parts of the procurement require outsourcing, such as the use of migrant workers, temporary agency or posted workers, light entrepreneurs working through invoicing services or self-employed persons? Which parts of the procurement would usually rely on long subcontracting chains?
- Are there any known risks associated with use of migrant workers and subcontracting/outsourcing in the sector?
- What kind of resources are needed on a daily/weekly basis to produce the service/contract? How large is the personnel need for the service/contract that is the subject of the procurement?
- Which of the selection criteria or contract terms and liability requirements aimed at preventing labour exploitation seem unreasonable or impossible to implement, or raise the price of the procurement unreasonably?
- What kind of qualitative selection criteria can be used to ensure that the contracting partner has sufficient economic and financial capacity in relation to the size of the procurement?

<sup>13</sup> For more possible questions for suppliers to prevent labour exploitation, see HEUNI's publication "[Navigating through your supply chain](#)" and especially the [Screening Tool - Who are your Partners?](#)

## Phase 3 – Tendering and award criteria

The Act on Public Procurement and Concession Contracts requires that public procurements exceeding the national thresholds are tendered out, and that a public notification on the competitive tendering is available in the HILMA portal ([www.hankintailmoitukset.fi](http://www.hankintailmoitukset.fi)). Small procurements below national thresholds may also be reported in HILMA. In the interest of preventing labour exploitation and human trafficking, public tendering should be considered in high-risk sectors to ensure transparency and non-discrimination, even though less cumbersome procedures can be used in small-scale contracts than contracts covered by the Act on Public Procurement and Concession Contracts.

### Exclusion criteria and suitability requirements for tenderers and requirements concerning the subject of the procurement

Contracting entities may set requirements for the subject of the procurement and the supplier providing it. The suitability requirements and minimum requirements are binding under the Act on Public Procurement and Concession Contracts. If the suitability requirements are not met, the tenderer is excluded from the tendering procedure. However, according to the Act on Public Procurement and Concession Contracts, the conditions of suitability for tenderers must be proportionate to the subject of the procurement, in addition to which the principles of public procurement, such as equal, open and non-discriminatory treatment of tenderers, must also be observed in the procurement procedure. The mandatory exclusion criteria for tenderers are laid down in section 80 and the suitability requirements are laid down in sections 83-86 of the Act on Public Procurement and Concession Contracts.<sup>14</sup> The mandatory exclusion criteria includes certain serious crimes if less than five years have passed from the conviction. Contracting entities must request an extract from the criminal record in procurements exceeding the EU threshold, but contracting entities may, if they so wish, also request extracts from the criminal record of responsible persons and on the payment of taxes in procurements below the thresholds.<sup>15</sup>

**For example, parties who have been convicted of human trafficking, tax fraud or occupational pension insurance fraud must be excluded from tendering. The grounds for exclusion also include extortionate work discrimination (Criminal Code, Chapter 47 3(a), work discrimination (Criminal Code, Chapter 47 3), an employment agency offence (Criminal Code, Chapter 47 6) and the unauthorized use of foreign labour (Criminal Code, Chapter 47 6 (a)).**

<sup>14</sup> The Public Procurement Advisory Unit (JHNY) has created a [Finnish language template](#) to check whether the winner of the tender has a criminal background.

<sup>15</sup> Ministry of Employment and Economy of Finland (2017): [Guide to Socially Responsible Procurement](#). MME Publications 3/2017.

**If they so wish, the contracting entity may, under section 78 of the Act on Public Procurement and Concession Contracts, check whether the companies also in the subcontracting chain are subject to any of the mandatory or discretionary exclusion criterion. In this case the contracting unit may require the replacing of the subcontractor.**

The Act on Public Procurement and Concession Contracts also includes discretionary exclusion criteria. These include minor infringements and deficiencies on the basis of which companies can be excluded from tendering, if the company as a legal person or persons in the company's management have been involved in serious misconduct in their professional activities, which call into question their reliability and which the contracting entity can prove. The use of this criterion does not require a judgment from a court of law. It is sufficient if the misconduct in professional activities can be established by any justifiable means.<sup>16</sup> For example, failure to comply with the obligations laid down in the Act on the Contractor's Obligations and Liability when Work is Contracted Out could be regarded as such misconduct if it can be confirmed by public inspection reports made by the occupational safety and health authorities and if the company has not taken corrective measures. In the future, violating the provisions of the forthcoming Act on corporate social responsibility could also be considered a serious error. In the construction sector, contracting entities may check whether a company or a group participating in a competitive tendering process is included in the Finnish Construction Trade Union's embargo list.<sup>17</sup> However, it should be noted that a company or group on the embargo list may already have corrected the problems that led to the embargo. Therefore, the contracting entity may request evidence of corrective measures, such as a valid payment plan for unpaid taxes.

Section 86 of the Act on Public Procurement and Concession Contracts enables the contracting entity to add requirements to the tendering procedure related to the suitability of the tenderer, which ensure that the candidates and tenderers have the necessary personnel, financial and technical resources and sufficient experience to implement the contract in line with the requirements by the contracting entity. On this basis, the contracting entity could require that the supplier has sufficient experience of carrying out audits of their subcontracting chain or that the supplier has sufficient resources to monitor the reports required by the Act on the Contractor's Obligations across the entire subcontracting chain (if also required by the contract). Sufficient experience can be verified by examining the tenderer's previous assignments (references), which must be set out in the invitation to tender documents. The professional skills, competence and experience of the personnel provided can only be assessed if the subject of the procurement is a service, a construction contract or assembly and installation activities related to the procurement of goods.

<sup>16</sup> Hankintaturisti (2020): [About competitive tendering of cleaning services \(hankintaturisti.com\)](#).

<sup>17</sup> A blockade list by the Finnish Construction Trade Union (Rakennusliitto): [Saarrot \(rakennusliitto.fi\)](#).

### Example 3: Case of labour exploitation related to the City of Espoo in Finland

In 2020, Helsingin Sanomat, the largest daily newspaper in Finland, reported on deficiencies in the City of Espoo's cleaning services as part of a broader investigation into problems related to labour exploitation in the cleaning sector. The problems were related to a cleaning company used by the city. Although the City of Espoo had complied with laws and regulations in the procurement procedures, the media questioned whether the city had sufficiently, seriously and quickly reacted to the unclarity. After the news came out, the City of Espoo terminated the contract with the company in question and has since then developed regular quality monitoring in addition to the requirement for self-monitoring by service providers, and revised its anti-grey economy programme, which also includes the prevention of human trafficking. The right size for the staff of service providers will also be assessed more systematically.

Sources (in Finnish): Teittinen, P. ja Suutarinen, M. 10.1.2021. [Untidy business](#). Helsingin Sanomat (hs.fi); Teittinen, P. 6.7.2020. [Head of procurements for the City of Espoo claimed that the city had only heard about the ambiguities related to the company that exploited cleaners in 2017, while in reality, the city was told about exploitation ten years ago](#) Helsingin Sanomat (hs.fi); City of Espoo 9 July 2020. [Espoo does not approve of the exploitation of workers](#). (stinfo.fi).

### Restricting or prohibiting long subcontracting chains

When concluding procurements in risk sectors, consideration should be given to limiting the chain of sub-contractors to only a few tiers. The use of subcontracting cannot be completely prohibited, but long subcontracting chains can be restricted. Pursuant to the Act on Public Procurement and Concession Contracts (section 77, subsection 4), the contracting entity may require that the tenderer or a member of the consortium can themselves carry out certain critical tasks in the procurement of construction and service projects and in the assembly and installation work related to the procurement of goods. Critical tasks may include tasks requiring a certain qualification/competence or tasks that are particularly critical/essential and important for the procurement.

As an example, the Helsinki City Group has outlined in its instructions on combating the grey economy that in connection with construction contracts the supplier may outsource/subcontract the contract only one step forward. The contract can only be further subcontracted for justified reasons and with the client's written consent.<sup>18</sup> Senate Properties (public entity that develops the Finnish government's property assets and work environments) has also limited the chain in construction contracts to three tiers, which improves the management of the subcontracting chain and increases transparency but does not unreasonably hinder the implementation of the service that is the object of the procurement.

### Example 4: Senate Properties' Action plan for the prevention of financial crimes

Senate Properties sets requirements that are stricter than required by law for their suppliers e.g., concerning subcontracting chain, which aim to increase transparency related sub-contractors' backgrounds. The action plan ([Prevention of financial offences](#)), which is freely available for all includes, for example, contractual terms and conditions for preventing financial offences in construction and maintenance projects, as well as, in service procurement and maintenance. The supplier must also submit reports on all subcontractors within the supplier's subcontracting chain, and it may only use subcontractors approved in advance by the contractor in writing. The workplace introduction and orientation of everyone on the site must be provided in a language that ensures that the worker understand the issues.

**In addition to restricting subcontracting chains, the contracting entity may also oblige the tenderer to commit to measures that increase the transparency of subcontracting.**

Transparency is needed especially in procurement in high-risk sectors in situations when it is not possible to restrict the subcontracting chain. If the tenderers do not know the structure or extent of their possible subcontracting chain when providing their tendering, the supplier can at the very minimum be obliged to submit a report on their intended subcontracting chain at the beginning of the contract and keep the contractor updated on possible changes in the subcontracting chain throughout the contract. In the case of a construction or service contract which is carried out under the direct supervision of the contracting entity, the contracting entity must, at the latest at the beginning of the contract period, require the tenderer to provide more detailed information on subcontractors if this is available. The tenderer must also notify the contractor of any changes during the contract period. The same reporting obligation can be extended to businesses employed within the subcontracting chain and can also be applied in other risk sectors (Act on Public Procurement and Concession Contracts, section 77. subsections 1-3). Information can also be used by the contracting units for targeting supervision during the contract period, assess the risks related to labour exploitation associated with the tender and the number of resources needed for supervision during the contract period.

Many risk sectors have certificates or services in place to promote sustainable subcontracting.<sup>19</sup> There are also commercial services that gather information on companies and how they have succeeded in meeting their obligations. The contractor cannot require tenderers to use commercial services or costly certificates, but if contracting entities/businesses are already users of such services they can be used to obtain assurance that the terms of the contract have been met.

#### **Examples of contract terms and conditions be included in the invitation to tender**

Invitations to tender may require tenderers to commit themselves to the contracting entity's contract terms and conditions for preventing labour exploitation as there may be significant differences between tenderers in procedures related to subcontracting chains, operating cultures, and oversight of the contract. An obligation can be added to the procurement contract requiring the supplier to include the same conditions related to labour exploitation in all its contracts with subcontractors. The terms and conditions of contract on pages 41-43 may be attached to the instructions for submitting tenders. It is advisable that the terms and conditions are assessed by procurement and contract experts to ensure their applicability. The terms and conditions can be verified by requesting reports and clarifications at the beginning of the contract period or by obliging the tenderer to submit a declaration that in preparing their tender, they have taken these specific considerations into account.

**In order to increase the transparency of the subcontracting chain, the following information can be requested as part of the tendering:**



#### **Workforce structure**

What is the share of directly hired, migrant and fixed-term workers, as well as workers through personnel service companies and subcontractors in the workforce?

How has the start of work and orientation of employees with a migrant background been arranged?

How are employees informed about general terms of employment and their rights in Finland?



#### **Supply chain**

Does the tenderer use personnel and recruitment companies and/or so-called self-employed/light entrepreneurs?

Does the chain include numerous subcontractors? Which countries do the migrant workers come from and what is their citizenship?

How has the tenderer selected its supply chain partners and how will the tenderer ensure that they comply with the same requirements concerning the terms and conditions of employment?

How will the tenderer ensure throughout its entire chain that migrant workers have a valid permit to work?

Is there an internal or external reporting channel through which all employees involved in the procurement can report any abuses they encounter and do so anonymously if they wish?

<sup>19</sup> For example: RALA-Competence, Vastuu Group-Services, The Tax Authority's Compliance Report ja Työmaarekisterin työmaa-avain.

**Examples of terms and conditions <sup>20</sup>:**

The tenderer must familiarise themselves with the sustainability policies or action plans guiding the activities of the contracting entity and take into account the provisions and obligations presented in these when submitting their tender (for example, obligations concerning terms of employment or responsibility).

**Verification:** The tenderer declares that, when preparing the tender, it has familiarised itself with the sustainability policies or action plans presented in connection with the tender and has taken them into account in the procurement that is the subject of the contract. Yes/No

The tenderer may ensure that employees and any subcontractors it has hired or posted in Finland work in conditions that meet the general terms of employment prevailing in the Finnish labour market. The tenderer may support the right of employees covered by the procurement to enter into or resign from an employment relationship and their right to freedom of association and right to organise.

**Verification :** The tenderer must attach a report on the subcontracting and the labour structure required for the implementation of the procurement during the contract period, and on how it intends to ensure that the reports referred to in the Act on the Contractor's Obligations and Liability are requested on a regular basis in its subcontracting chain, and on how the minimum terms of employment are monitored during the contract period. (See more information on the documents requested under the Act on p. 23)

The tenderer is responsible for ensuring that the employees have an appropriate and valid residence permit and that the tenderer's subcontractors also commit to these terms and conditions throughout the procurement. Yes / No.

The contracting entity may require an account of whether the employees have been familiarised with the key terms and conditions of employment and rights of the employee before the work begins, including whether they have been given information on the possibility of joining the trade union.

When selected as the contract supplier, the tenderer must undertake to attach an account of the complaint mechanisms or ethical reporting channels that it has available, and who has access to the reporting channel and how this has been communicated to workers.

**Verification:** Yes / No + free form explanation.

The tenderer must inform the contracting entity if, during the contract period, the company as legal person or the company's management personnel is convicted of an offence in Finland or another EU country.

**Verification:** Free-form explanation

<sup>20</sup> Means of verification must be planned according to the general principles governing public procurement as laid down in the Act on Public Procurement and Concession Contracts (section 3, subsection 1). Contracting units may use templates or forms to make verification procedures less burdensome.

According to section 98.2 of the Act on Public Procurement and Concession Contracts, procurement agreements concluded between a central government authority and the successful tenderer shall include a condition on compliance with the minimum terms and conditions of employment governing work of the same nature under the law and collective agreements of Finland. Other contracting entities have the same obligation when the contract concerns a construction contract. (Act on Public Procurements and Concession Contracts, section 98.3)

**As long as the terms and conditions have a connection to the implementation of the contract as referred to in the Act on Public Procurement and Concession Contracts, the contract model may include, for example:**

**1. During the contract period, the contracting supplier has the obligation to notify the contracting entity of, e.g., the following:**

- Maintain an up-to-date list of all subcontractors (including chains of subcontractors) used by the supplier, including self-employed workers / a list of persons, e.g., at the site, and are they working under an employment contract or self-employed.
- Provide, on request, up-to-date information on the persons performing the work and their working hours (in accordance with the requirements of the Data Protection Act) and provide a notification in advance on changes to working shifts.
- Indicate migrant workers' right to employment.
- Submit notifications on subcontracting related to the contract at the latest at the beginning of the procurement contract.
- Have the contracting unit approve the use of new subcontractors during the contract period.

**2. During the contract period, the contracting entity must have the right to:**

- Require contracting parties to check the reports required from subcontractors in line with the Act on the Contractor's Obligations and Liability, if the contractor has reasonable doubts that the obligations are being neglected.
- Carry out random inspections at sites where the work is carried out and report on the results. Inspections may be carried out by the contractor, an internal audit or by some other independent external party hired by the contractor (Note: This condition may restrict tenderers and differ from JYSE's position, which should be mentioned at the tendering stage).
- Request evidence that migrant workers throughout the entire supply chain, who are involved in the procurement, have valid work permits.
- Request reports and clarifications or responses to enquiries concerning supply and subcontracting chains used by the supplier.
- Terminate or cancel the contract if the supplier does not implement corrections to its activities or repeatedly (materially) violates the contract terms or if the mandatory or discretionary exclusion criteria are met during the contract period.

### 3. Other obligations of the supplier, such as the obligation to:

- Complete and return the sustainability reports or forms requested by the contractor that were attached to the invitation to tender in accordance with the schedule requested by the contracting unit.
- Ensure that the reports required by the Act on the Contractor's Obligations and Liability when Work is Contracted Out requested by its contracting partners (subcontractors) are reviewed throughout the entire subcontracting chain.
- Provide reports showing that its subcontractors have purchased and paid pension policies and other appropriate insurance policies.
- Commission the translation of the reports and certificates of foreign companies to ensure that the contracting unit understands their content.
- Prohibit its own partners from using recruitment fees throughout the entire subcontracting chain.
- Provide orientation and introduction to work for both its own employees and workers who work through subcontractors (in a language they understand) on the employees' rights in Finland, the terms and conditions of employment applicable, as well as on who to contact if problems arise (e.g., ethical channel, Assistance system for victims of human trafficking, Victim Support Finland, etc. See page 51 and page 54.
- Send the contracting unit a report showing the content of the orientation.
- Attach information to the orientation on the terms and conditions of employment in Finland, the possibility of joining the trade union, and what actions to take if the employee is subjected to exploitation (see page 54) and who to contact if problems arise, including occupational safety and health authorities.
- Send the contracting unit public reports if any occupational safety and health inspections have been carried out at the companies participating in the procurement over the last five years.
- Report on any possible deficiencies arising in independent inspections by the supplier.
- If the supplier itself, the contracting unit or the authorities discover abuses related to working conditions during the contract period, participate in correcting the situation in accordance with an agreed timetable and report on the progress of the corrective measures to the contractor.

Labour exploitation will also be prevented by imposing a contractual penalty for negligence. The imposition of a contractual penalty also serves as a means of communicating the principles of sustainability and ensuring that their implementation is monitored.

### Example 5: Sanctions used by Senate Properties

*The Senate Properties' Action plan for the prevention of the grey economy include the use of sanctions. A fine may be imposed on the suppliers for deficiencies or negligence such as when a subcontractor is used that has not been approved by the contractor. The fine can be up to EUR 10,000. Senate Properties submits reports to the Tax Administration monthly on contracts that are at least EUR 10,000 in value and requires contractors to submit the same reports to the Tax Administration for subcontracts of 10,000 euros or more in accordance with given instructions.*

Source: Senate Properties (2016): [Contract terms for the prevention of financial offences \(senaatti.fi\)](#).

### Piloting of contract terms as part of procurement

New suitability requirements or contract terms can be piloted in smaller or less critical procurement or in certain sectors before their more extensive introduction. In this way, it can be determined:

- How many tenders have been received using these terms and conditions?
- Have the requirements had an impact on the number of tenders submitted or on the realisation of competitive conditions?
- How contract suppliers have succeeded in complying with the terms during the contract period?
- How tenderers can be supported in achieving the requirements if the use of new requirements and conditions appears to have undesirable effects?

### Obligation to determine the background of an exceptionally low tender price

A responsible contracting entity will investigate if they are presented with a suspiciously low tender and look into whether all requirements have been taken into account in the given price. Fraudulent actors are able to utilise different strategies to reduce costs and generate income, thus exceptionally low prices increase the risk of labour exploitation.<sup>21</sup> Low prices may also pose financial risks and the contracting entity may unknowingly be involved in fraudulent or even criminal activities.

<sup>21</sup> Jokinen, A. et al. (2019): [Shady Business. Uncovering the business method of labour exploitation](#). HEUNI Publications series No. 92a. Helsinki: HEUNI.

Section 96 of the Act on Public Procurement and Concession Contracts obliges contracting entities to require a report on exceptionally low tenders. The obligation applies to procurements exceeding the EU threshold value, but contracting entities have the right to request clarification also in procurements below the EU threshold value, even if it is not obliged to do so under the law. If the evidence is not sufficient to explain the low level of prices or costs, the contracting entity must reject the tender. When examining costs, particular attention must be paid to the realisation of terms of employment throughout the subcontracting chain, and it must be ensured that the obligations listed in section 81, subsection 1(5) have not been breached. The tender must be rejected if the investigation shows that the tenderer has violated the environmental, social and labour law obligations in collective agreements subject to Finnish or EU legislation or in the international agreements listed in Appendix C of the Act on Public Procurement and Concession Contracts, and the contracting entity can prove the infringement.<sup>22 23</sup>

**In particular, in the case of exceptionally low tenders in which the Act on the Contractor's Obligations and Liability when Work is Contracted Out must be applied during the contract period, a contracting entity acting in a responsible manner will request a report on the tenderer's business model, the use of subcontracting chains or the share of posted employees the company uses. In the case of long subcontracting chains, there is reason to consider whether the price offered can provide appropriate compensation to all parties involved in the procurement; as a follow up it may be necessary to begin a more in-depth investigation into what the price consists of if it appears to be low.<sup>24</sup>**

It is also a good idea to monitor the age of tendering companies. A new company has "clean papers". Therefore, where possible, it should be determined whether the company's management has been responsible for past cases of negligence, for example, in other companies. The size of the tenderer's company and its turnover can also be examined in relation to the size of the procurement/contract, as it may be challenging for a small company to cope with a large procurement. On the other hand, a small turnover combined with large contracts in the past may be evidence of involvement in the grey economy and in the commissioning of undeclared work. References from past projects may provide information on the tenderer's ability to successfully complete the procurement.

<sup>22</sup> JHNY:19/12.2016. [Exceptionally low tenders](#) | Association of Finnish Municipalities (hankinnat.fi).

<sup>23</sup> PTCServices Oy 7.7.2020. [Suspicious of exceptionally low tenders? What to do?](#) (ptcs.fi).

<sup>24</sup> Finnish Market Court. MAO:216/12. [Market Court Ruling](#) (finlex.fi/en/).

## Phase 4 – Measures during the contract period

Although the identification of human trafficking and labour exploitation is ultimately the responsibility of the authorities, professionals engaged in public procurement can identify cases of exploitation and help to expose human trafficking and promote victims' access to services. Monitoring and inspections during contract periods can be carried out as long as the contract terms and conditions are described in the contractor's invitation to tender. It is important to develop auditing or contract supervision within public procurement, as the resources of the supervisory authorities are limited and only a small share of misconduct is detected. It is equally important to maintain a dialogue with suppliers throughout the contract period to ensure that the measures related to the prevention of labour exploitation specified by the contracting entity are implemented and, if necessary, further developed in cooperation between the contracting entity and the supplier. Contracting entities should use discretion in determining how and with what priorities they will organise supervision, on and off sites, and making sure that terms and conditions of employment are respected. The national strategy and action plan for tackling the grey economy and financial crime emphasises the importance of developing auditing methods in the public sector and, in particular, the fact that supervision should be cost-effective, and risk based.<sup>25</sup>

The **aim of the supervision by contracting entities** could be for example preventing labour exploitation as part of combating the grey economy, or strengthening the sharing of information, the identification of deficiencies, checking the accuracy of information requested in advance, and cooperating with different actors. For the contracting entity to be able to carry out effective contractual supervision, it must allocate sufficient staff and time resources for doing so. For this reason, it is important that municipalities and central government actors commit to implementing sustainable procurement on a strategic level.

In the prevention of labour exploitation and human trafficking as part of contractual supervision, it is important that persons carrying out audits or inspections activities **understand the links between different forms of exploitation, violations of the labour code and labour crimes and know** of the signs of exploitation. Inspection activities should be supported by the **systematic management and updating of contract documents and contract information**. Up-to-date information on staff and working hours of people employed by the tenderer along with changes in subcontracting chains will support both the contracting entity

<sup>25</sup> Ministry of Economic Affairs and Employment. 11.6.2020. [Government decision on the national strategy and action programme for combating the grey economy and financial crime 2020–2023](#).



and the work of the authorities if problems arise.<sup>26</sup> If the contracting entity has been able to adequately document that the tenderer has neglected its labour law obligations during the contract period, the tenderer in question may be excluded from the coming tendering process by involving previous experiences as reason for exclusion.<sup>27</sup>

Much of the monitoring of implementation of contractual terms can be done remotely from the office. For example, many documents can be reviewed without the need for on-site visits. This includes submission of reports and clarifications required by the Act on the Contractor's Obligations and Liability when Work is Contracted Out. The contracting entity can also **request reports and clarifications and confirm that the statutory reports have been submitted in an up-to-date manner**. The organisation's terms related to social responsibility can also be monitored, e.g., by asking the supplier to **complete and submit sustainability reports or surveys related to responsibility**. Contracting entities may also use the contents of this guide to draw up a separate sustainability questionnaire to examine the implementation of labour rights and social responsibility. In addition, supervision based on employee reporting can be carried out. The contracting entity can commission job satisfaction or safety surveys to increase an open dialogue and to obtain information on deficiencies.<sup>28</sup> **Job satisfaction surveys** can also be planned in cooperation with the tenderer. In addition to remote monitoring, on-site workplace assessments, **audits and spot checks** are very effective means for combating labour exploitation. These are discussed in more detail in the next paragraph.

#### **Auditing, inspection visits and spot checks**

On-site audits to check compliance with labour law obligations and contracts should be considered in procurements where a high risk of labour exploitation has been identified. Depending on the subject and scope of the audit and the resources of the contracting entity, external expertise may be obtained to support the audit, but the contractors' own personnel may also carry out workplace assessments and occasional quality control visits. Inspections may also be carried out in cooperation with other supervisory authorities.

#### **Example 6: Joint inspections between the City of Helsinki, the Confederation of Finnish Construction Industries RT and the Finnish Construction Trade Union to combat the grey economy**

*During the summer and autumn of 2021, the City of Helsinki launched a joint campaign with the Confederation of Finnish Construction Industries RT and the Finnish Construction Trade Union to combat the grey economy at construction sites. During joint supervision visits, inspectors provide information on the latest manifestations of the grey economy, including the mistreatment of migrant workers. The aim of the spot checks is also to support the responsibility of the contracting partners and to identify occupational safety deficiencies and abuses that cannot always be prevented by means of advance supervision.*

Source: City of Helsinki. 28 April 2021. [The city of Helsinki is increasing efforts to prevent the grey economy in construction](#)

**Planning of inspection measures** should entail the defining of clear objectives. For example, inspections can be part of regular quality control or be organised as separate efforts.

**Inspection visits can be used to monitor working conditions, the length of subcontracting chains and foreign workers' right to work when hired by subcontractors. Attention may be directed to the accuracy of the shift schedules by comparing the persons on the list with those working at the workplace and/or to workers' occupational safety and protective equipment.**

Organisations, cities or municipalities might consider mapping existing language skills among their own staff members to assist with the inspections. Also, the possibility of using an interpreter during inspections or if drafting info-sheets or other dissemination materials for migrant workers should be considered. Especially in procurements related to large contracts, inspection measures may need to be planned in cooperation with the supplier.

<sup>26</sup> Finnish Competition and Consumer Authority (2019): [The grey economy and public procurement](#). | Finnish Competition and Consumer Authority (kkv.fi).

<sup>27</sup> Lindman, K. (2021): [Taking labour rights into consideration in public procurements](#). University of Eastern Finland. Master's Thesis, Department of Law.

<sup>28</sup> The Ministry of Economic Affairs and Employment in Finland has created Finnish language templates that can be utilised [here](#).

## The following signs may indicate that there is a risk of labour exploitation in subcontracting:

- It is unclear who works at the workplace and who is the employer.
- People are working at the site even though the shift schedule or their general working hours indicate that they should have time off.
- Workers appear scared and do not want to share information on their working hours.
- Workers do not have an employment contract.
- The same workers often work long hours or have no holidays or statutory breaks.
- The occupational safety of workers has not been ensured.
- Workers do not have the required safety equipment or suitable clothing.
- Workers are taken to and from work by someone who does not work with them.
- Workers are housed with/by an employer or they live at the workplace (e.g., in spaces where work is carried out, like back rooms or cellars or other inappropriate housing conditions).
- The worker is unaware of the exact location of their workplace or place of accommodation.

### You can also check out these more comprehensive lists of indicators of labour exploitation and human trafficking available online:

- Victim Support Finland (RIKU) video "[Would You be able to identify a victim of human trafficking?](#)" – YouTube.
- Indicators of exploitation and human trafficking drawn up by the Assistance system for victims of human trafficking, as well as, instructions for referral to the assistance system [www.ihmiskauppa.fi/en](http://www.ihmiskauppa.fi/en)
- Indicators of labour exploitation and human trafficking related to recruitment, pay, work tasks and living conditions, in Lietonen, A. and Ollus, N. (2018): [Guidelines for businesses and employers for risk management in subcontracting chains](#). Helsinki: HEUNI Publication Series No. 88c.
- Minimum terms and conditions of employment listed by the occupational safety and health authorities [Minimum terms and conditions of employment - OSH authority \(tyosuojelu.fi\)](http://tyosuojelu.fi).

### Read more about how to conduct audit and inspection visits with an emphasis on exposing labour exploitation:

- [Workplace assessment tool](#) in Lietonen, A., Ollus, N. and Jokinen, A. (2020): [Navigating through your supply chain. Toolkit for prevention of labour exploitation and trafficking](#). Helsinki: HEUNI Publication Series No 93b.
- Checklist 1. Identification of labour exploitation for labour inspectors and other authorities in Ylinen, P., Jokinen, A., Pekkarinen, A-G., Ollus, N., Jenu, K-P. and Skur, T. (2020): [Uncovering labour trafficking](#). Investigation tool for law enforcement and checklist for labour inspectors. Helsinki: HEUNI Publication Series No 95b.
- Labour rights and supervision of foreign labour from the contractor's perspective. Pilot project: Combating the grey economy and financial crime in public procurement. Matti Rinne – DHS Oy Audit Partners.

Contracting entities also **have the possibility to influence and develop the supplier's operating culture**. Audit measures and inspections create an **opportunity to share information on the rights of workers** in Finland and provide workers an opportunity to speak out about problems they may have encountered. Sustainable procurement means that the contracting partners are informed, when possible, about the risk of labour exploitation and provided with information on how to detect the warning signs. If audit and inspection measures include awareness raising efforts, the materials and information should be made available in languages spoken by the workers, otherwise it may be difficult for them to understand the information. It is important to lower the barriers of reporting by, e.g., telling the workers that authorities and trade unions can be approached without fear. Many employees might have had bad experiences with authorities, or they might have been misled by the exploiters. It is important to inform workers also about organisations that can provide anonymous support in the event of a problem.

**Awareness can be increased by sharing brochures on the terms and conditions of employment in Finland, listing the available reporting channels and providing information on how to act if an employee is subjected to exploitation.**

Brochures by authorities and organisations are available online as PDF files and can be left in a visible location where work is being performed, or they can be shared during quality control or other visits and included as part of the orientation.

#### **Multilingual materials available online:**


- A brochure published by the Ministry of Economic Affairs and Employment (MEE) and Victim Support Finland (RIKU) (2021) on the terms and conditions of employment to be observed in Finland and on how to act in case of exploitation; available in Swedish, English, Ukraine, Nepal, Russia and Thai: [Working in Finland - the online service of the Ministry of Economic Affairs and Employment \(tem.fi\)](#)
- The Finnish Occupational Safety and Health Administration (2016) leaflet on the principles of working in in Finland; available in Finnish, Swedish, English, Estonian, Russian, Romanian, Chinese, Kurdish and Hindi: [New brochure for migrant workers - OSH \(tyosuojelu.fi\)](#)
- Animations by Victim Support Finland (RIKU) on employee rights in 16 different languages: [Labor exploitation – Victim Support Finland \(riku.fi\)](#)

#### **Sanctions and dismissal**

Neglecting the rights of workers during the contract period will entitle contracting entities to take measures under contract law. The termination of the contract requires that the terms and conditions of the contract have been significantly violated, i.e., the supplier has, in an evident manner, violated the rules or regulations concerning working conditions. For example, grounds for termination could be added in contracts, e.g., if the supplier neglects requests by the occupational safety and health authority or if the supplier does not take corrective measures or repeatedly violates the terms of the contract. In these cases, the contracting party has the right to terminate the contract with a reasonable period of notice. The contracting partners may also establish the right to terminate the contract on a discretionary basis with, for example, a six-month notice period. Adding sanctions to contract terms can also encourage suppliers to comply with the contract (see Example 5. p. 44).

Persons carrying out audits or inspections must have clear instructions on what action to take if labour exploitation is detected. If the contracting entity identifies problematic practices in their own processes, all corrective measures should be mainstreamed internally. The contracting entity must assess on a case-by-case basis whether the deficiencies identified will be reported to supervisory authorities or if corrective measures by the supplier are sufficient. In the following section, suggestions and considerations for drafting specific guidelines for situations in which exploitation is detected or suspected are presented.

# PART III: Guidelines for situations where there is sus- pected labour exploitation and human traffick- ing in public procurement



Contracting entities may encounter or detect situations in which suspicions of labour exploitation might arise. Possible victims of exploitation can be encountered by, e.g., persons in charge of contracts and other persons working with contracts, recruitment, and salaries. Also, supervision and service procurement personnel, such as site managers and project managers, along with persons working at the same sites where the work is conducted, such as school staff, can identify victims of exploitation.

### Example 7: Identifying a case of human trafficking in a day-care centre

*In Finland, one human trafficking case came to the attention of the authorities when kindergarten staff began to wonder why the parents of some of the children, they were caring for had no days off or holidays. It turned out that the parents worked long hours in an ethnic restaurant in bad conditions. Their employers were later found guilty of human trafficking by both the District Court and the Court of Appeal.*

Source: Jokinen et al. (2015): [Guidelines for municipalities. Improving the effectiveness of actions against trafficking in human beings locally](#). Publication of the Council of Baltic Sea States and the Ministry of the Interior of Latvia.

## When suspicions arise

In this section, the details regarding specific contact points in suspected cases of exploitation are specific for Finland.

### What to do in case of emergencies:

- If an incident involves an immediate threat to a person's life or health, instantly report the incident to the police by calling the emergency number 112.
- If you observe any indications of criminal offences linked to labour exploitation, report the case to the police unit specialising in investigating human trafficking at [ihmiskauppa@poliisi.fi](mailto:ihmiskauppa@poliisi.fi).

### Where to ask advice and support for the contracting entity and/or the victim of exploitation:

- If you suspect someone to be a victim of human trafficking or severe labour exploitation in need of support, contact the Assistance System for Victims of Human Trafficking at + 358 295463177 or find more instructions and information at [www.ihmiskauppa.fi/en](http://www.ihmiskauppa.fi/en).

- If you suspect that a person needs advice related to their employment relationship or how to proceed with the problem they are experiencing, provide contact details for organisations that can give assistance. Tell the worker that problems may be discussed also anonymously.
  - The SAK employee rights advisory service at [workingfinland@sak.fi](mailto:workingfinland@sak.fi), which also offers free legal advice in employment matters at +358 (0)800414004. For more information on services, visit the [Immigrants web page \(sak.fi\)](#)
  - Contact the Victim Support Finland service for victims of human trafficking by email [help@riku.fi](mailto:help@riku.fi) or by telephone (also by text message or WhatsApp) at +358 (0)40 632 9293. More information about the services available see the website [Service for Victims of Human Trafficking and Related Crimes - Victim Support Finland \(riku.fi\)](#). Victim Support Finland also coordinates local human trafficking networks in the municipalities of Oulu, Vaasa, Turku, Tampere and Kuopio.

#### Where to send tipoffs and information about misconduct:

- If a contracting supplier or their subcontractor breaks the law, is guilty of tax evasion or other irregularities, notify the authorities:
  - Occupational Safety and Health Authority - [Send us a tipoff Occupational Safety and Health \(tyosuojelu.fi\)](#)
  - Finnish Tax Administration - [Reporting suspected tax evasion \(vero.fi\)](#)
  - The Police (if it is non-urgent) - [Leave a tip - report suspected crimes to the police \(poliisi.fi\)](#)
- If the contracting supplier does not comply with the terms of employment, you can request the occupational safety and health authority to carry out an occupational safety and health inspection to check compliance with the statutory obligations.
- In unclear situations, it is worthwhile to ask for advice and additional information from the occupational safety and health, tax and immigration authorities.
- If you suspect that the tenderers are part of a cartel, send a tip to the Finnish Competition and Consumer Authority's cartel investigation team - [Tip us off on restrictions of competition - the Finnish Competition and Consumer Authority \(kkv.fi\)](#)

## Establishing a step-by-step process for reporting suspicions

Within each organisation there should be a clear process for who to notify suspicions and signs of exploitation, and how the contracting entities or other persons linked to the contract, will be instructed on reporting suspicions. The responsible party who to report suspicions may be, for example, an immediate supervisor, a sustainability unit, a human resources management expert, an internal audit or a risk management unit etc. Instructions must be provided on the use of the organisation's internal reporting channel, if there is one, and the national authority designated to receive reports of breaches (to be established in 2022) so that the personnel know how to report their suspicions to the correct channel.

In Finland, work to combat exploitation and human trafficking is carried out by many authorities and actors, and the Assistance system for victims of human trafficking operates in parallel with them. When suspicion of human trafficking arises, it is advisable to contact the police unit specialising in investigating human trafficking and the Assistance System for Victims of Human Trafficking which can provide further instructions. The police or the occupational safety and health authorities must be notified of suspicious situations or hazardous work sites. Trade unions, organisations and authorities listed previously in this chapter can also provide advice and support in situations where it is unclear what actions to take.

## Ten steps to prevent labour exploitation and human trafficking in public procurement

This guide can be summarised in ten steps which will help contracting entities to prevent labour exploitation and human trafficking within national public procurement. Following these steps will significantly reduce the risk of labour exploitation and promote sustainable procurement practices.

**1** Include the prevention of labour exploitation and human trafficking in the values, policies or action programmes of organisations, and boldly highlight these values in the tendering of procurements. Draw up instructions for persons working on the implementation of procurements, such as those involved in quality control, inspection activities and contract monitoring, on what actions to take when suspicions arise.

**2** Raise the awareness of management, contracting entities and other employees working in procurement on the factors and circumstances that increase the risk of labour exploitation and human trafficking, as well as on relevant legislation. Facilitate the participation of procurement experts in related training and/or the activities of responsibility networks.

**3** Assess the risks of exploitation in an organisation's own procurement practices and, where possible, also in connection with the contracted partners and their subcontractors.

**4** Based on the risk analysis, add the relevant sustainability requirements and recommendations listed in this guide to the different phases of the procurement procedure, also taking into account the possible chain of subcontractors used by contracting partners. Ensure the effectiveness of the sustainability and CSR requirements, and the equal opportunities for suppliers to participate in the tendering process, by engaging in a market dialogue on how tenderers intend to prevent labour exploitation.

**5** Increase transparency across the entire subcontracting chain through contractual means. Make an effort to examine, e.g., the background of the companies and responsible persons involved in the procurement, and to strengthen effective monitoring of contractor obligations even beyond the minimum requirements laid down in national legislation.

**6** Develop contractual supervision by using quality control and feedback surveys and regular checks on partners to ensure they meet the requirements set for them.

**7** Increase the awareness of migrant workers on their rights as employees in Finland throughout the entire subcontracting chain. The organisation must distribute this information themselves or require contracting parties to do so.

**8** Promote the reporting of irregularities and the protection of whistle-blowers by requiring that the suppliers have an internal or external reporting channel, the existence of which is communicated to all employees involved in the procurement in a language they understand. Require suppliers to provide information to their subcontracting chain on the national authority established to operate as an external reporting channel (see EU's Whistleblower Directive).

**9** Make an effort to uncover problems, misconduct or non-compliance with a procurement's contractual terms by collecting feedback by means of separate surveys or by engaging in discussions with the contracting partner and persons employed through subcontracting chains.

**10** Where possible, engage in closer cooperation with occupational safety and health, tax authorities, trade unions and/or organisations, by asking for advice, sharing information, and jointly developing solutions to the challenges concerning information exchange. Also, investigate opportunities for cooperation with other public procurement bodies, such as the state, municipalities or joint municipal authorities, to prevent labour exploitation.

## More on the topic online

### Blogs and articles in magazines (in Finnish):

- Jokinen, A. 9.6.2021: [Uudet työkalut tukevat työperäisen ihmiskaupan paljastamisessa](#) - (rikosentorjunta.fi)
- Kostianen, R. 9.6.2021: [Ihmiskaupan paljastuminen on koko yhteiskunnan etu. Vaikuttajana Venla Roth](#) – (rikosentorjunta.fi)
- Teittinen, P. ja Welp, K. 25.4.2021: [Tutkinta lopetettu](#) – (hs.fi)
- Työ- ja elinkeinoministeriö 20.8.2020: [Ulkomaisen työvoiman hyväksikäyttöön luvassa vastatoimia](#) – (tem.fi).
- Valkama, H. 6.7.2020: Virkamies: [Hyväksikäyttö saattaa koskea tuhansia työntekijöitä – Ulkomaisen työvoiman hyväksikäyttö on ongelma, jolta on helppo sulkea silmät.](#) – (yle.fi).
- Jokinen, A. 10.3.2020: [Harmaa talous on osa työperäisen hyväksikäytön ja ihmiskaupan liiketoimintamallia](#) - (vero.fi)
- Sarmela, M. 10.6.2019: JHNY-vieraskynä 19.6.2019: [Harmaan talouden torjunta Helsingin kaupunkikonsernissa](#) - (hankinnat.fi)

### Webinars and podcasts (in Finnish):

- Senaattikiinteistöt ja Julkisten hankintojen neuvontayksikkö 21.5.2021: [Hyvät käytännöt talousrikollisuuden torjuntaan rakennusalalla](#) - (kunta.tv)
- Ihmiskaupan uhrien auttamisjärjestelmä 13.4.2021: [Ihmiskaupan torjunta osana yrityksen yhteiskuntavastuuta](#) - (youtube.fi)
- FIBS ry ja HEUNI 10.12.2020: [Työperäinen hyväksikäyttö Suomen kontekstissa: FLOW-työkalupakki yrityksille](#) - (youtube.fi)
- FIBS ry ja HEUNI 12.12.2019: [Työperäinen hyväksikäyttö Suomen kontekstissa – mitä yritysten tulisi tietää?](#) - (youtube.fi)
- Julkisten hankintojen neuvontayksikkö 12.12.2019: [Kuuntele, kuinka tilaaja-vastuulakia sovelletaan julkisiin hankintoihin](#) - (hankinnat.fi)

### Guides and other publications related to the theme (in Finnish and English):

- Finnwatch (2018): [Sanoista tekoihin. Sosiaalisen vastuun pilottiprojekti Hansel OY:n ja KL-Kuntahankinnat Oy:n kanssa.](#) Finnwatch.
- Harmaa talous ja hankinnat (2019): [Harmaa talous ja hankinnat -raportti: Korruption torjuminen edellyttää hyvää hankintaosaamista.](#) Kilpailu- ja kuluttajavirasto.
- Lietonen, A., Jokinen, A. ja Ollus, N. (2020): [Navigating through your supply chain](#) – Toolkit for prevention of labour exploitation and trafficking. Helsinki: HEUNI Publication Series No 93b.

- Lietonen, A. och Ollus, N. (2018): [Guidelines for businesses and employers for risk management in subcontracting chains.](#) Helsinki: HEUNI Publication Series No. 88c.
- Lindman, K. (2021): [Työntekijöiden oikeuksien huomioiminen julkisissa palveluhankinnoissa.](#) Itä-Suomen Yliopisto. Pro gradu -tutkielma, Oikeustieteiden laitos.
- Morris, D. (2020): [Driving change through public procurement.](#) A Toolkit on Human Rights for Procurement Policy Makers and Practitioners. Köpenhamn: The Danish Institute for Human Rights.
- OECD (2018): [OECD Due Diligence Guidance for Responsible Business Conduct.](#) Wien: OSCE Working Party on Responsible Business Conduct.
- OSCE (2018): [Model Guidelines on Government Measures to Prevent Trafficking for Labour Exploitation in Supply Chains.](#) Wien: Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings.
- OSCE (2021): [Summary of OSCE Workshops on Prevention of Human Trafficking in Supply Chains through Public Procurement and recommended next steps.](#) Wien: OSCE Office of the Special Representative Coordinator for Combating Trafficking in Human Beings.
- Roth, V. ja Luhtasaari, M. (2021): [Suomi torjuu ihmiskauppaa. Ihmiskaupan vastainen toimintaohjelma.](#) Oikeusministeriön julkaisuja 2021:5. Helsinki: Oikeusministeriö.
- Työ- ja elinkeinoministeriö (2017): [Opas. sosiaalisesti vastuulliset hankinnat.](#) TEM oppaat ja muut julkaisut.
- Työ- ja elinkeinoministeriö (2014): [YK:n yrityksiä ja ihmisoikeuksia koskevien ohjaavien periaatteiden kansallinen toimeenpanosuunnitelma.](#) TEM julkaisuja 44/2014.



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