

# **What are the municipalities doing to combat work-related crime?**

## **English summary of Hva gjør kommunene for å bekjempe arbeidslivskriminalitet? Fafø-rapport 2017:08**

What are the municipalities doing to combat work-related crime – and how can these efforts be strengthened? What kind of challenges has the municipal sector come up against, and to what extent have these been placed on the agenda? These are some of the questions addressed in this report, which is based on interviews in selected municipalities and county administrations.

Only a few of the municipalities in the sample are aware of major cases of work-related crime in their own region. The question has nevertheless been put on the agenda in many places as a result of intense public attention.

Although violations of laws and regulations related to public procurement have attracted wider attention, studies show that the municipalities face difficulties in monitoring and follow-up. A report published by the Office of the Auditor General in 2016 points to deficient routines and systems for prevention of work-related crime. Our study shows that the municipalities give priority to the procurement phase, seeking to weed out unethical suppliers at an early stage.

### **Why is this important?**

In their role as service providers, purchasers of goods and services, employers and monitoring agencies, the municipalities and county administrations are large and significant social actors.

In 2015, the municipal administrations procured goods and services worth NOK 183 billion. Procurement of construction services is a key area. The vast majority of the municipalities outsource various services, such as road maintenance and day care. In the county administrations this applies primarily to public transport and maintenance of county roads. Due to the size of this sector and the fact that the municipalities are stewards of the community's funds, it is crucial to ensure that suppliers to the municipal sector abide by prevailing laws and regulations and pay taxes, and that the suppliers' employees enjoy decent wage and labour conditions.

### **What is work-related crime?**

The term ‘work-related crime’ is not clear-cut, but is frequently defined as violations of Norwegian regulations regarding wage levels and labour conditions, social security contributions, taxes and fees, or as organised crime that minimises production costs and thus distorts competition. Other related terms used in this context include social dumping and unethical business practices. Social dumping is associated with low wages, violations of HSE regulations and rules for working hours, and provision of sub-standard housing to workers. The term ‘unethical business practices’ is also frequently used in the context of social dumping, where it is applied to enterprises that operate on the edge of the law, commit violations or operate in ways that are incompatible with accepted business practices.

### **About the study**

The study consists of two parts. First, we have conducted interviews in 24 municipalities and five county administrations about the measures that have been enacted in this area and the experiences that the municipalities have gained (referred to as ‘the broad study’), Second, we have undertaken an in-depth study in two municipalities (Skien and Bergen) and a county administration (Sør-Trøndelag). The study is not representative of Norwegian municipalities and county administrations in general. Our objective has been to gain a deeper understanding of the nature of the efforts undertaken in this area and ‘where the shoe pinches’. Skien and Bergen were chosen because these two municipalities have initiated a number of efforts to combat work-related crime and thus have had an opportunity to gain experience in this area.

### **What are the municipalities doing to combat work-related crime?**

The study shows that the municipalities emphasise competence in regulations and procurement. The largest municipalities will often have separate procurement units, and thus better preconditions for ensuring appropriate procurement processes. The municipalities also prioritise efforts to select the correct suppliers of goods and services. When asked about their efforts to combat work-related crime, the general answer is that these measures primarily target the role of procurer of goods and services.

Many municipalities participate in procurement cooperation. This renders the processes more efficient, in addition to helping avoid unethical enterprises, since the procurers are more specialised and have access to better information. The major cities and county administrations help with pre-qualification, provide alert lists and quality assurance, or monitor contracts for smaller municipalities. In regional cooperation structures, the municipalities undertake procurement jointly or on each other’s behalf. The City of Oslo is engaged in a procurement cooperation scheme in which municipalities from all around the country participate and share available information on different suppliers. The advantage of participating in a larger procurement cooperation lies in the market power and thus better prices this provides for, and in the opportunity to engage more actively to avoid unethical enterprises.

The municipalities are subject to public procurement regulations, with appurtenant provisions regarding wage levels and labour conditions. New regulations came into force on 1 January 2017, but the experiences reported by the municipalities in this study are of course based on the previous set of regulations.<sup>1</sup>

The municipalities can point to a number of measures that go beyond the prevailing procurement rules. These include separate guidelines on the requirement for apprentices, restrictions on the number of suppliers in a contract chain, an expanded tax certificate for specific industries, adaptation to the recommendations by the Collaboration Against the Black Economy (SMSØ), use of electronic invoicing systems and collaboration with the specialised units for combatting work-related crime established in several cities (Bergen, Trondheim, Stavanger, Kristiansand and Oslo).

In the two municipalities that are in the focus of this report, Bergen and Skien, political decisions on setting limits on supply chains were made already in 2014. However, little experience from restricting supply chains has been gained, primarily because no major projects have been initiated since these decisions were made. Sør-Trøndelag county stands out in having been among the first to professionalise and formalise its procurement routines. This may have helped exclude a greater number of unethical enterprises than would otherwise have been the case.

The so-called 'Skien model' which has attracted widespread attention is the result of collaboration between the municipality, the Norwegian Union of Municipal and General Employees and the Telemark chapter of the Confederation of Norwegian Enterprise (NHO). The measures primarily target suppliers in the construction industry, and in addition to limitations on supply chains, the requirements include permanent employment contracts, trade certificates for a majority of the workers, the use of Norwegian as the main language, approval of the enterprises to take on apprentices, and payment of wages through a Norwegian bank.

In Bergen, the procurement department and the tax collector's office have agreed on an expanded tax certificate for suppliers to the municipality in selected industries.<sup>2</sup> This permits collection of information retrospectively on the employees for whom wages have been reported and on whether these wages have been reported to the Norwegian Tax Administration. In addition, it permits collection of information on the use of foreign manpower from the Central Office for Foreign Tax Affairs.

The municipalities that have collaborated with the special investigation units for work-related crime refer to these as crucially important. In Bergen, for example, this unit and the procurement department have initiated a collaboration to strengthen the latter's competence in monitoring wage levels and labour conditions. The investigation unit also collaborates with the offices for licensing of alcohol sales and processing of building permits, as well as the fire department.

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<sup>1</sup> The new regulations require enterprises that deliver services, such as in the construction industry, to have apprentices. The new Act also opens for restrictions on the number of links in the supply chain.

<sup>2</sup> Construction, cleaning, manpower suppliers and car cleaning services.

### **Challenges abound – follow-up is the greatest**

Since the EU enlargements in 2004 and 2007, Norway's affiliation with the EEA area and its free flow of goods, capital, labour and services has caused the greatest labour immigration the country has ever seen. An unfortunate consequence of this free flow is the greater latitude it provides to unethical business operators. Moreover, the EEA Agreement defines the framework for public procurement regulations. These regulations include provisions to ensure equal treatment of Norwegian and foreign suppliers. In addition, the municipalities need to relate to the regulations on wage levels and labour conditions in public contracts.

Our informants in the municipalities are of the view that it is difficult to follow up the regulations properly, and that it requires a lot of time, resources and competence. Many of them feel that both the regulations and the follow-up have become increasingly extensive. Although some municipalities are major procurers with a turnover in the hundreds of millions, allocation of resources for monitoring often need to be balanced against other pressing tasks and services. Control of wage levels and labour conditions is reported to be especially difficult. Requesting written documentation is rarely sufficient to reveal work-related crime in this area. We may ask whether the municipalities realistically will be able to engage in effective follow-up unless this work is considerably reinforced in terms of both resources and competence. Most likely, it will be necessary to establish extensive regional coordination, headed by the largest municipalities. Efforts at the municipal level should also be better coordinated with government action taken in this area.

Large markets and comprehensive contracts may render it more difficult to reveal whether someone is engaging in dishonest practices deliberately or inadvertently, or is involved in criminal activity. For example, it may be difficult to distinguish suppliers that wilfully break the law from those who just need guidance.

Further challenges reported include the lack of coordination between public agencies that can help the municipalities select the best supplier, as well as the discrepancy between requirements imposed nationally and at the central level in the municipality on the one hand, and actual practices in the procuring organisation on the other.

In Skien, some challenges have been encountered over time with regard to the prevailing requirements. These involve, for example, the requirement that Norwegian should be the main language on construction sites. The requirement for only a single link under the main supplier in the contract chain has proven difficult to implement in practice, and is likely to be revised.

### **Small is different from large**

According to feedback from the smaller municipalities in this study, work-related crime is not a problem. The informants point out that they are well familiar with the various local suppliers, and they regard their market as unattractive to large and well-organised criminal actors. The question is, however, whether the problem is considered minor because the control measures also are of a limited nature. Another issue pertains to

whether too strict regulations may represent a barrier to tendering by small and local enterprises. This applies to rural areas in particular.

### **Need for more training and collaboration**

A number of manuals and checklists have been developed for use by the municipalities. However, the informants highlight the need for more information and training material associated with the procurement regulations, implementation of monitoring and inspections, and ways to detect organised crime.

Many call for even more systematic and coordinated collaboration between government agencies and municipalities. Positive experiences from collaboration with the investigation units for work-related crime may be an explanation. Some also point to the importance of retaining local tax assessment and collection offices. The argument is that a local tax collector will have local knowledge which is crucial for exercising control, and will also be able to act as a partner to the administration of the municipality/county in question.

Resource problems are unavoidable. This applies in particular to competence-building and allocation of additional funds for purposes of control and follow-up. Long processing times for violations represent a further challenge, since this may cause enterprises to disappear or declare bankruptcy before restarting and continuing as before.