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Experiences with regulations limiting the use of subcontractors in public procurements





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This note presents findings from a limited interview study on the effects of integrity provisions in public procurement within the construction sector, specifically rules that limit the maximum length of supply chains. We examine how national and local regulations are applied by public contracting authorities, including the possibilities for exemptions. We also investigate whether these rules have helped improve integrity and whether they pose challenges for the industry.

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Preface

This note is based on findings from a limited research project on experiences with regulations that limit the tiers of subcontractors in the supply chain in public procurements within the construction industry. The note is based on an interview study conducted during the spring and summer of 2025.

The project was carried out on behalf of the Norwegian Confederation of Trade Unions (LO). We extend our thanks to the commissioning party, represented by Robert Rene Hansen, for the opportunity to work on such an important and engaging topic.

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1 Introduction

Norway's Regulation on Public Procurement includes several provisions designed to ensure that employees working under public contracts have fair pay and working conditions. For instance, all contractors' and subcontractors' employees must have pay and working conditions that, as a minimum, correspond to those stipulated in generally applicable collective agreements, where such exist, or to those in the national collective agreement applicable to the relevant sector (Regulation on Pay and Working Conditions in Public Contracts, section 5).

In Norway, the discourse on social dumping, work-related crime and disreputable labour practices is particularly linked to certain vulnerable industries. These issues came to the fore after the eastern enlargement of the EU in 2004 and 2007, which led to large-scale labour immigration to Norway from new EU/EEA member states. The construction industry and the cleaning industry have been identified as sectors particularly exposed to social dumping and work-related crime, partly due to the high proportion of labour migrants who are particularly vulnerable to exploitation (NOU 2022: 18, p. 153). The public sector is a major contracting authority in these industries through public procurement.

In 2016, the National Audit Office of Norway concluded that there was 'inadequate follow-up of pay and working conditions among suppliers engaged through public contracts' (National Audit Office of Norway, 2016). The report references experiences from, for example, the National Criminal Investigation Service of Norway (Kripas), which noted that 'long contract chains and complex corporate structures are used to conceal the illegal working conditions found at "the bottom" of the chain' (2014). This can make it difficult for public contracting authorities to monitor compliance with the regulations on pay and working conditions in public tenders.

The purpose of this study was to gather knowledge about various actors' experiences with the regulations that limit the tiers of subcontractors in the supply chain in public procurements. The scope of the project is limited to the construction industry.

1.1 Rules on the number of tiers in the supply chain

Restrictions on the use of subcontractors have been introduced to increase the accountability of main contractors and to give them, contracting authorities and supervisory bodies better oversight of working conditions in public procurements. This has primarily been done by introducing limits on the number of tiers in the vertical supply chain.

Among the measures proposed in the Solberg Government's 2015 strategy to combat work-related crime was the introduction of a regulatory provision limiting the use of subcontractors in high-risk sectors (Ministry of Labour and Social Inclusion, 2015, p. 8). The government's bill for new legislation of public procurements states that 'the fewer the tiers in the supply chain, the easier it will be to monitor them' (Proposition to the Storting 51 L (2015–2016), pp. 53–54). The legislative proposal and the government's strategy were based on the Simplification Committee's report on a new public

procurement regulatory framework, where a minority proposed limiting the supply chain to a maximum of three tiers in total (NOU 2014: 4, p. 114). The bill also noted that several public contracting authorities, including Statsbygg and the Oslo municipal government, already had experience with using such clauses (Proposition to the Storting 51 L (2015–2016), p. 54).

In 2017, the limitation on supply chain tiers was incorporated into national legislation when a new Public Procurement Act came into force. According to section 19-3 of the new Public Procurement Regulation, for procurements involving construction or cleaning services, the contracting authority must require that suppliers have no more than two tiers of subcontractors below them. This effectively limits the vertical supply chain in these sectors to three tiers, including the main contractor. The rule does not impose any restrictions on the horizontal supply chain. The main contractor is therefore free to enter into agreements with an unlimited number of subcontractors, as long as they are contracted either directly or through a single intermediary. The rule currently applies to projects with an estimated value exceeding NOK 1.3 million for central government contracting authorities and NOK 2 million for other public contracting authorities (NOU 2023: 26, p. 170).

Section 19-3 of the Public Procurement Regulation allows for the supply chain to be extended when necessary. If the contracting authority deems it necessary to ensure sufficient competition, the tender may allow for a greater number of supply chain tiers than the standard limit set by the regulation. Additionally, the regulation permits the contracting authority to grant an extension of the supply chain after the contract has been awarded, if this is deemed necessary for completing the work.

In line with the Public Procurement Regulation, the requirement to limit the supply chain to two tiers below the main contractor is also included in the integrity provisions for the construction industry (Directorate for Public Administration and Financial Management, 2025). These provisions are based on a consensus between representatives of both labour and employer organisations (United Federation of Trade Unions and the Federation of Norwegian Construction Industries), as well as the Norwegian Association of Local and Regional Authorities (KS) and the Directorate for Public Administration and Financial Management (DFØ). The provisions include requirements that must be contractually regulated under current legislation as well as recommended best practices. The purpose of the agreed integrity provisions is to combat work-related crime in the construction industry.

Some local authorities have chosen to introduce local provisions that go beyond the national procurement rules, by requiring a maximum of one subcontracting tier below the main contractor. This was first introduced in Skien in 2014 as part of the 'Skien Model', a strategy to combat social dumping in the construction sector (Skien local authority, 2014). In 2017, Oslo adopted similar local rules limiting subcontracting to one tier as part of the 'Oslo Model' (Oslo City Government, 2017, point 8), and is currently the largest public contracting authority with such a rule. Several other local authorities have either introduced or discussed adopting the Oslo Model. Introducing such a rule at the national

level has also been debated, including through proposals from branches of the United Federation of Trade Unions (United Federation of Trade Unions, 2021).

The Støre Government stated in the Hurdal Platform (the foundational document for the new Labour Party-led government) that it would ‘develop a Norwegian model with national guidelines for all public procurement’ (Office of the Prime Minister, 2021, p. 48). In the most recent proposal to amend the Public Procurement Act, the Ministry of Trade, Industry and Fisheries proposes retaining the rule that limits subcontracting to two tiers below the main contractor, and incorporating this provision directly into the legislation (Prop. 147 L (2024–2025), pp. 61–62). The proposal is based in part on the first interim report from the Procurement Committee, which notes that the two-tier limit for subcontractors ‘appears to have broad acceptance in the market’ (NOU 2023: 36, p. 171).

Rules governing the maximum number of subcontracting tiers permitted in public procurements vary throughout the country. Whether the main contractor or the design and build contractor is included in the number of tiers may be a source of confusion. In this report, we refer to the number of subcontractor tiers, unless otherwise specified. This method of counting supply chain tiers is in line with the wording of the regulations and with our informants’ responses relating to these provisions.

Two tiers refers to rules that allow a maximum of two subcontracting tiers below the main/design and build contractor, i.e. **a supply chain with a maximum of three tiers**, which is the general rule in the Public Procurement Regulation.

One tier refers to rules that allow a maximum of one subcontracting tier below the main/design and build contractor, i.e. **a supply chain with a maximum of two tiers**, a requirement imposed by some local authorities.

1.2 Research questions

This project concerns actors’ experiences with and perspectives on the limitations placed on the number of subcontracting tiers in public procurements. This includes experiences with the requirement in the Public Procurement Regulation limiting subcontracting to two tiers, as well as local regulatory models that impose even stricter limits on supply chains. We are interested in how the regulations are applied by public clients, i.e. the extent to which requirements related to the supply chain are included in tender announcements and subsequently followed up, and in which cases the exemptions permitted by the regulations are applied.

We also examine the consequences the regulations have had for public procurements in the construction sector. This includes both the intended effects, such as promoting integrity and combating work-related crime, as well as any unintended consequences. Examples of the latter may include difficulties for contractors in carrying out projects due to the supply chain restrictions, or that contracting authorities find companies less willing to submit tenders, which in turn affects competition for public contracts. We ask to what extent the regulations have achieved their intended purpose – namely, giving

contracting authorities, main contractors and supervisory bodies better oversight of pay and working conditions at public sector construction sites. We also explore how the regulations affect market competition, and whether they make it more difficult to carry out larger and more complex projects or to use local suppliers.

Our research questions are limited to the provisions in the public procurement regulations that restrict the supply chain. Other parts of the procurement regulatory framework aimed at promoting integrity and combating work-related crime are not addressed directly.

1.3 Methodological approach

We used a qualitative methodological approach, where interviews with key informants were the main source of information. The study is based on a total of ten interviews with public clients (4) from both the state and municipal sectors, supervisory bodies (2), companies (2) and employee and employer representatives (2). Some public clients have experience with regulations limiting the supply chain to one tier. The companies we spoke with are larger-sized construction contractors. These often act as the main contractor in public procurements.

We used a semi-structured interview format with a standardised interview guide that allowed for in-depth exploration. The interviews were conducted remotely via Microsoft Teams and lasted about one hour. Most informants were recruited through direct contact with their company/organisation. In some cases, informants were recruited using the snowball method, i.e. through recommendations from other informants. The sample of informants is limited. We prioritised speaking with the larger actors on both the contracting authority and contractor sides. This provides valuable insight into experiences with the regulations within the largest and most complex procurements but offers limited information on compliance and the consequences of the regulations in smaller projects and in different parts of the country.

2 Experiences with the regulations

This chapter presents findings from the interview study. Restrictions on the supply chain to two and one tier, respectively, are addressed separately. First, we present experiences with the implementation of the Public Procurement Regulation's two-tier rule and the intended and unintended consequences this regulation has had for the construction industry. Finally, we present experiences and views on local models that impose stricter requirements than the regulation by limiting the supply chain to one tier.

2.1 Implementation of the Public Procurement Regulation's two-tier rule

According to section 19-3 of the Public Procurement Regulation, all public procurements within the construction industry are generally required to limit the supply chain to two tiers. We asked our informants whether this requirement is imposed in all construction contracts, how the contracting authority ensures compliance, and to what extent exemptions to this rule are granted.

Our interviews suggest that the two-tier rule, which was incorporated into national legislation in 2017, has become a standard requirement in public construction contracts. None of those we spoke with were aware of any contracts being advertised without specifying requirements regarding the number of tiers in the supply chain. The Public Procurement Regulation allows the contracting authority to accept longer supply chains in the tender announcement if this is deemed necessary to ensure sufficient competition for the contract. Based on our interviews, tenders are seldom advertised with supply chains exceeding two tiers.

However, it is more common for exemptions to be granted when the work is underway, after the contract has been signed. The regulation permits such exemptions post-contract if it is 'deemed necessary to carry out the contract due to unforeseen circumstances' (Public Procurement Regulation, section 19-3(2)). Our interviews shed light on the types of challenges that can arise during public sector projects that typically need the supply chain to be expanded. The reasons for requesting and granting exemptions can vary and may, to varying degrees, meet the regulation's requirement of unforeseen circumstances.

In some cases, the supply chain must be expanded due to an unforeseen need for expertise that is not available within the existing supply chain. An example could be a need to blast bedrock during excavation works. Our interviews with main contractors and employer representatives suggest that most services can generally be covered within two supply chain tiers, so the need for this type of exemption from the two-tier rule is limited. Furthermore, a representative from a contracting company stated that obtaining a dispensation to extend to three tiers is not normally problematic when it involves specialists.

Other exceptions occur more systematically due to structural factors within various parts of the industry and are primarily driven by labour needs rather than specialised

expertise. Staffing situations among subcontractors create a need to extend the supply chain across several disciplines. Problems often occur when the main contractor needs to involve the transport sector, which can lead to requests to extend the supply chain. Informants have pointed to examples where a second-tier subcontractor identifies a need to hire self-employed vehicle owners, thereby creating a third tier in the vertical chain.

We've had some discussions about this, where we say that [the need to hire self-employed drivers] is not a valid reason for an exemption. But it can be considered unforeseen if the company has a core staff and the scope turns out to be more extensive. If they can demonstrate such a situation, an exemption may be granted. (Public client)

Our interviews suggest that public clients' practices vary in terms of granting supply chain extensions. This is illustrated by the two interview quotes below, from a central government client and a medium-sized local authority.

<p>We have had a few cases where exemptions were requested during the contract. In those cases, our assessment is based on the regulation, so there must be unforeseen circumstances. If their business model depends on tiers, that's not allowed. We think the contractors have adapted well to the rules, so enforcing this is rarely problematic. (Public client)</p>	<p>We enforce a maximum of three tiers below the main contractor. The requirement in the tenders is two tiers, but in most projects, we need to increase to three tiers at different stages of the project. In 99% of the projects, we encounter three tiers at some level. [...] It mostly concerns labour. (Another public client, municipal sector)</p>
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There are several reasons why enforcing the two-tier requirement can be challenging in certain markets. Municipal clients operating in smaller markets can face difficulties because local suppliers often have a small core staff, which can quickly lead to a need to hire additional labour. Practice seems to vary in terms of when the hiring of labour is considered a separate tier in the supply chain. In several places, local suppliers have established partner agreements that allow for the routine transfer of labour. Such arrangements can lead contracting authorities to view an extension of the supply chain as low-risk in terms of compliance and integrity.

What I try to avoid, for example, is staffing agencies. But if local suppliers – say, different electrical companies – hire workers from each other, I think that's a better solution than bringing in a staffing firm. (Public client, municipal sector)

One respondent from a contracting authority suggested that the criteria for granting exemptions after a contract has been signed could be improved by adopting a more flexible formulation. They suggested that additional tiers should be permitted on the basis of, for example, 'justifiable grounds'. The reasoning was that it can be difficult for both contracting authorities and contractors to predict the need for such extensions. The current requirement of 'unforeseen circumstances' was considered too narrow and not closely aligned with how the regulation is actually practised.

Several respondents also pointed out the importance of the contracting authority enforcing the regulation, noting that in many cases, this can be limited by resource availability.

My impression is that this is being done, that contractual requirements for two tiers are being set. I'm a bit less certain about how well this is being followed up. It's possible there is a somewhat more lenient approach to extending it to three tiers, in how 'unforeseen circumstances' are interpreted. (Public contracting authority)

In most public procurement projects, digital tools are used to register the supply chain. The HMSREG portal is used by many public clients and is one example of such a tool. In HMSREG, contractors register the companies that are part of the supply chain. In addition, workers are registered individually on personnel lists, allowing them to be linked to the correct tier in the contract chain. Several interviewees pointed out that contracting authorities have better oversight in projects where such tools are used, and that working conditions are generally more orderly.

None of our informants gave the impression that deliberate breaches of supplier tier regulations are widespread. A source from the national supervisory body found that in some cases, the supply chain had been incorrectly registered by suppliers. However, the person in question did not consider this to be a deliberate attempt to circumvent the regulations:

Sometimes the list in HMSREG is filled out incorrectly. It's carelessness, not cheating. I ask them to correct it, and I usually get the right version within half an hour. It's to do with not knowing how to use their own tools. (Supervisory body)

Building on this, one client points out that varying interpretations of what constitutes a 'tier' in the supply chain can lead to unintentional circumvention of the regulations.

We have to be honest and acknowledge that there are probably some who use three tiers without reporting it. Much of this comes down to interpretation: how substantial does a service need to be in order to count as a tier? (Public client, municipal sector)

Several also mentioned that compliance can be poorer in smaller and more short-term projects, where both the contracting authority and the main contractor might not have the same level of oversight. This could be due to them having limited administrative resources.

2.2 Consequences of the Public Procurement Regulation

Most of the people we spoke with in this project agree that short and transparent supply chains are, in principle, beneficial. There is also a widespread perception that the integrity of public construction projects has increased in recent years. Several describe a situation where it was previously difficult to know which actors were part of the supply chain and therefore who was responsible for the workers providing the labour.

This stopped after the two-tier regulations were introduced. It became much easier to identify who the employer is for those involved. (Employee representative)

There are, however, differing views on the extent to which this is an actual consequence of the limitations on supplier tiers. Several of our informants believe that tools like HMSREG improve oversight of the supply chain. A representative of a public client noted that it is not primarily the regulations themselves, but the ability to register actors in digital overview lists that has given clients and main contractors better oversight of who is working at public sector construction sites.

The period before HMSREG was introduced, the rules perhaps provided a bit more oversight. But the systems weren't good enough to give a real overview. After we got HMSREG, I think oversight would have been just as good with or without the supplier tier regulations. (Public client)

Sources from national supervisory bodies report that the length of the supply chain does not affect their ability to carry out their supervisory work, but it does make the contracting authority's job easier. In this context, it was noted that shorter supply chains reduce the risk of non-compliance with generally applicable pay and working conditions throughout the entire contract chain.

We also asked various actors whether the limitations on the length of the supply chain have changed the structure of the industry. It is conceivable that companies would need to expand their core staff or bring in a broader range of expertise to remain competitive in tenders with a shorter supply chain. The interviews indicate that this is rarely the case, and that the regulations have affected the structure of supply chains more than the companies themselves.

I don't have the impression that the industry has had to adapt, or restructure, and so on. What we've seen is simply closer and better follow-up, and that the supply chains are no longer getting out of control. Ten years ago, the chains were probably longer. Back then, there was poor oversight of which companies and individuals were actually present at construction sites. (Employer representative)

We have just as many subcontractors, they're just spread horizontally rather than vertically. (Public client)

Even when the supply chain is extended, the regulations can still serve as a useful resource for the contracting authority. A municipal client who regularly had to approve

longer supply chains said that the regulations still provided contracting authorities with better insight into how companies structure and manage projects commissioned by the public sector. This is because exemptions must be justified in each individual case, which means the contracting authority is notified and has the opportunity to follow up.

So far, we have considered the consequences of the regulations primarily from the client's perspective. We have also examined whether the regulation's limitation on supply chain length presents challenges for public contracting authorities and construction companies engaged in public procurements. The overall impression from our interviews with main contractors is that the two-tier limit in the supply chain is manageable, as long as the exemption mechanism can be used in special cases.

One of the contractor companies we interviewed stated that they were already practising a two-tier limit in the vertical supply chain before the national regulations were introduced, through internal company guidelines. The company's employee representatives had been key advocates for these guidelines. For this company, the regulation was naturally unproblematic. The quote below is from this company, where the respondent reflects on the industry as a whole:

It was probably an adjustment at the time, but I think it became manageable fairly quickly. We're in construction and handle a fair amount of our own production, but there's a lot we don't have, like electricians and plumbers. In our experience, two tiers are sufficient for our project structure. (Company representative)

The representative for the construction industry also noted that the regulations were 'initiated and actively advocated for by the industry itself'.

2.3 Experiences with one tier

Some local authorities have imposed regulations limiting the supply chain to a single tier. These rules vary somewhat but also share many similarities. In the interviews, we made a distinction between experiences with the single-tier requirement and those with the two-tier requirement in the national regulation. Below, we present experiences with single-tier rules in local models, primarily focusing on the Oslo Model, which is the largest and most influential of these.

Our interviews suggest that the Oslo Model's single-tier requirement is applied in most tender competitions within the construction industry in Oslo. However, for larger tenders, it is common for the local authority to allow up to two tiers. This can be done based on market considerations, involving an assessment of whether this is necessary either to ensure sufficient competition for the tender or to enable execution of the project (Oslo local authority, 2019). According to our interviewees, no more than two tiers are permitted. This means that the main rule of the regulation is also followed in cases where exemptions are granted from the Oslo Model's main rule during the tender announcement phase.

Exemptions from the single-tier rule can also be granted after a contract has been signed, due to unforeseen circumstances. This also happens to some extent.

Representatives from contracting authorities explain that expanding the supply chain can become necessary for various reasons. The need for different expertise means that the local authority allows additional tiers, for example, a plumbing company subcontracting insulation work to other firms. Large maintenance projects on municipal properties are also cited as an example of work that can require more tiers. However, it is stressed that a lack of staffing alone does not justify expanding the chain, and as a general rule, having additional tiers performing the same type of work within the vertical chain is discouraged. It is extremely rare for more than two tiers to be permitted after contract signing.

Several employer representatives that we spoke with said that the single-tier requirement can make it difficult to submit bids on projects. The single-tier rule means the main contractor must have a direct contractual relationship with all subcontractors. This requires the main contractor to coordinate work across all disciplines included in the tender. Several informants noted that this often does not correspond well with the skills and expertise found in the different tiers, as illustrated in the quote below:

As a design and build contractor, we handle a wide range of specialties and trades. The entire value chain on a construction site can involve up to 20–25 different specialties/trades. The single-tier requirement means you have to extend the value chain so that you, as the design and build contractor, must manage them all. The challenge is that many specialties/trades are interconnected. [...] Those who supply kitchens to us need to subcontract installers. If they are not allowed to do so, we have to subcontract the installers ourselves and be responsible for the kitchen installation, even though this is not our area of expertise. (Company representative)

If the contractor thinks it will be necessary to extend the supply chain after the contract has been signed, there will be uncertainty regarding whether this will be approved by the contracting authority or not.

We need to take that into account during the tender phase. Then we have to think very differently about the contract chain. Then it becomes a matter of hoping for an exemption once the work is underway. (Company representative)

Strict rules for suppliers in public procurements can lead to companies in the market refraining from submitting tenders. We know of one example where a local authority attempted to introduce a rule limiting the supply chain to a maximum of one tier but had to abandon it due to a lack of bids on advertised tenders. As the client, the local authority found that it was standard practice in the local industry not to submit bids limited to one tier. After a relatively short period of time, the local authority decided to drop the one-tier requirement in the supply chain. Instead, they chose a different strategy to ensure the integrity of suppliers, which involved allocating more resources to monitoring public tenders, particularly in the construction sector.

3 Summary

Based on our interviews, the rule in the Regulation on Public Procurement that limits the number of tiers in the supply chain appears to be well established and largely uncontroversial within public construction projects. The interviews suggest that the rule is practised in public procurements within the construction industry. This overall impression may be skewed due to the composition of the study sample, as we prioritised larger actors on both the contracting authority and contractor sides.

The rule is uncontroversial in the sense that it is rarely viewed as a challenge by the industry representatives we spoke to. Some of the companies themselves also report having been advocates for this type of regulation. The possibility of extending the supply chain after contract signing is seen as an important mechanism for ensuring execution of the work in certain cases. The interviewees did not give the impression that granting such exemptions is a significant source of conflict between the contracting authority and contractor.

Public contracting authorities' practices vary in terms of exemptions after contract signing. We understand that this can largely be explained by the conditions created by the local supplier market. Some clients operate in local supplier markets that are structured in a way that makes it difficult to carry out projects without longer supply chains, and therefore more frequently need to grant exemptions. Even here, however, the regulations can help provide the client with better oversight of the supply chain, as the contractor's request for an exemption ensures that the contracting authority is informed.

While the construction industry generally adheres to limiting the supply chain to two tiers under the main contractor, we note that a single tier is more challenging. Companies indicate that meeting the one-tier requirement in practice means extending the horizontal chain of suppliers in a way that is impractical for this type of work. Complex projects will often require expanding the supply chain after contract signing, and whether this will be approved by the contracting authority can become a source of uncertainty in the tender process.

The interview survey underlying this note has provided important insight into the key actors' experiences with the regulations on supplier tiers in public construction procurements. However, it is important to reiterate that the sample is limited and mainly consists of larger actors. Several of our informants suggest that implementation and compliance with the regulations may differ in smaller municipalities and among smaller companies.

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