



Sustainable public
PROCUREMENT
A collaboration between the Swedish regions

SUSTAINABLE SUPPLY CHAINS

Guidelines contractual terms



2030 Agenda

On September 25, 2015, the UN member states adopted the 2030 Agenda. The Agenda, with its 17 goals, is an action plan for sustainable development to be achieved by 2030.

Goal 12.7

The twelfth goal concerns ensuring sustainable consumption and production patterns to reduce the adverse impact on the climate and the environment, as well as on people's health. It includes the target of also promoting sustainable public procurement practices, in accordance with national policies and priorities.

National cooperation between regions

The regions in Sweden are responsible for ensuring that all residents have access to good and well-functioning healthcare, dental care and public transport. In accordance with the 2030 Agenda and the UN Guiding Principles on Business and Human Rights, we strive to promote sustainable development. Since 2010, the regions in Sweden have had a national cooperation to promote sustainable supply chains through sustainable public procurement practices. Through collaboration and dialogue with our suppliers, we want to ensure that the procured goods and services have been produced under sustainable and responsible conditions.

For more information, visit www.hallbarupphandling.se, or contact the National Secretariat for Sustainable Procurement:

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 Post: Nationella Kansliet Hållbar Upphandling
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Guidelines, contractual terms

These guidelines aim to clarify what the Swedish regions expect from their suppliers in terms of social and environmental responsibility. The guidelines contain explanatory notes to the contractual terms concerning sustainable supply chains and outline the steps that a supplier needs to take to meet these conditions. The guidelines are also aimed at procurers who will be setting and following up requirements. The guidelines have been written in collaboration with the National Agency for Public Procurement.

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The UN Guiding Principles on Business and Human Rights

In June 2011, the UN Human Rights Council adopted the Guiding Principles on Business and Human Rights. The UN principles are based on the obligation of the state to protect human rights, the responsibility of businesses to respect human rights, and the opportunity for individuals to have their case heard in the event of violations. This means, for example, that states should ensure that any company with which they conduct business respects human rights. One step is to require, when applicable, that suppliers conduct a *human rights due diligence*. Accordingly, suppliers to regions in Sweden must have established procedures in place for identifying and managing risks associated with human rights, workers' rights, the environment and corruption, in their own operations as well as throughout the entire supply chain.



Code of Conduct for Suppliers

The regions in Sweden have adopted a joint Code of Conduct for Suppliers. You can read it in its entirety in the annex to these guidelines. The Code of Conduct comprises the following areas:

- The UN Universal Declaration of Human Rights (1948)
- The ILO fundamental Conventions
- The UN Convention on the Rights of the Child
- The applicable labour protection and health & safety legislation in the manufacturing country
- The applicable labour law, including minimum wage legislation, and the social security coverage in the manufacturing country.
- The applicable environmental legislation in the manufacturing country
- The UN Convention against Corruption

From Code of Conduct to follow-up

Code of Conduct for Suppliers

The Code of Conduct for Suppliers is common to all regions and has been politically endorsed. The Code of Conduct is based on the UN Global Compact initiative and its principles for corporate social and environmental responsibility. The code encompasses the areas of human rights, workers' rights, environmental protection and anti-corruption. The Code of Conduct for Suppliers can be found in Annex 1.

Invitation to tender

In procurements where it is deemed that the requirements shall be included, reference is made to the Code of Conduct for Suppliers in the invitation to tender:

“The tenderer is expected to read the document Code of Conduct for Suppliers carefully in connection with the tendering process. This because the presumed supplier, upon signing the agreement, undertakes to comply with the terms and conditions regarding social and environmental responsibility in the agreement. On signing the agreement, the supplier shall state the name and contact details of the person with operational responsibility for social and environmental matters for current company agreements.”

Before the supplier submits their tender, it is important that they are familiar with the Code of Conduct. It is equally important to be familiar with the requirements for internal policies and procedures that the supplier is expected to have in place at the start of the contract period and which can be found in the contract terms.

Contractual terms, sustainable supply chains

The contractual terms are harmonized, and state what the regions expect from suppliers concerning sustainable supply chains. The first clause outlines the fundamental terms to be complied with in the supply chain, which can be found in the Code of Conduct. The second clause outlines requirements for the supplier's efforts to systematically identify and manage the risk of non-compliance with the fundamental terms. The third clause enables follow-up of the requirements, and the fourth clause outlines the steps that regions may take in instances where the supplier fails to comply with the requirements or to participate in follow-ups. The contractual terms are listed on pages 6-7.

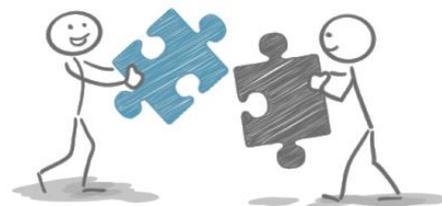
Follow-up

The regions in Sweden have joint procedures for following up contractual terms concerning sustainable supply chains. The responsibility for follow-up within the prioritized risk areas is also allocated nationally in order to ensure the effective use of resources. When a follow-up is initiated, the responsible region collects agreements from all other regions relating to the selected supplier and conducts a national follow-up. The follow-up serves to check that the supplier has procedures in place in accordance with the contractual terms, and that those are continuously applied to contracted products. This is achieved by having the supplier fill in a self-assessment and present the internal processes and procedures, as well as having the regions, themselves or through an external auditor, conduct an audit at the supplier's offices. During the audit, the procedures, as well as their implementation, are reviewed in more detail. The auditor may therefore ask to look at any risk analyses that have been conducted, as well as audit reports or meeting minutes. The audit also involves interviews with the executives, such as the CEO, the head of sustainability, quality manager or HR manager.

In some instances, the regions may choose to perform a so-called factory audit. The factory audit aims to check that the procedures are effective in practice and that the supply chain is in compliance with the fundamental terms. A factory audit can be performed at the supplier's own operations, or at their sub-contractors' facilities. The contractual terms stipulate that the supplier is obligated to facilitate to such an audit. A factory audit focuses on the conditions of the workers, but also on the factory's impact on the environment or nearby communities. This is reviewed for example by having one or more auditors interviewing workers, by inspecting the factory premises and other associated buildings (such as housing facilities) as well as reviewing documents. Off-site interviews and interviews with local organisations may also form part of an audit. The supplier is encouraged to participate during factory audits.

Action phase

If a follow-up reveals any non-compliance, irrespective of whether it concerns non-compliances identified during an office audit or a factory audit, the action phase is initiated. During the action phase, the supplier is given an opportunity to remedy any non-compliance. In this phase, the focus is on development and improvement, something that is carried out in close collaboration between the region, the supplier and the auditor. If a violation is found in a factory, it is important that any actions taken are proportional to the severity of the violation. When a non-compliance is identified, an action plan is always drawn up, including a time plan which is adopted by the supplier and approved by the region. Clause 4 in the contractual terms states what will happen in cases where the supplier does not remedy a violation in accordance with the adopted action plan.



Sharing results

When an audit has been performed, a summary of the audit findings is drafted, which is subsequently shared with all regions as well as with partners, such as Sykehusinnkjøp and SKL Kommentus Inköpscentral /Hållbarhetskollen. The summary presents essential information about the follow-up, such as the type of follow-up conducted as well as the results of the audit. The regions and partners are also informed when the audit has been concluded.

The results of the audit are also posted on the shared website, www.hållbar-upphandling.se. The audit results are only shared after the supplier has read and reviewed the report, and after any sensitive business intelligence has been removed.

Contractual terms Sustainable Supply Chains

§1 The supplier's commitment

Throughout the entire contract period, the supplier shall apply the contract terms under clauses 1-4. The contract shall be fulfilled in accordance with the following fundamental terms regarding sustainable supply chains:

- the UN Universal Declaration of Human Rights,
- the UN Convention on the Rights of the Child, Article 32,
- the eight core conventions of the ILO regarding forced or compulsory labour, child labour, discrimination, as well as freedom of association and the right to collective bargaining, (no 29, 87, 98, 100, 105, 111, 138, and 182),
- the labour law in force in the country where the work is performed, including regulations for salary, working hours, leisure time, and work environment,
- the environmental law in force in the country where the work is performed, and
- the UN Convention against Corruption.

These fundamental terms are explained in greater detail in the Code of Conduct for suppliers.

When international regulations prescribe stronger protection for the individual than national legislation, the supplier shall take reasonable measures to follow the international regulations.

The obligations concern all operations connected to the performance of the contract.

The supplier shall, in accordance with clause 2, ensure that the fundamental terms are fulfilled by hired subcontractors in all parts of the supply chain. In addition, the supplier shall ensure that these subcontractors participate in the follow-up, in accordance with clause 3.

§2 Policies and routines

To fulfil the obligations as listed in clause 1, the supplier shall take measures to prevent and manage any deviations from the fundamental terms according to clauses 2.1-2.6 below.

The measures shall be documented and applied continuously throughout the entire contract period in the supplier's own operations as well as in the operations of subcontractors in all levels of the supply chain.

At the start of the contract the supplier shall have:

- 2.1 a publicly accessible policy, approved at the most senior level of the business enterprise including a commitment to respect the fundamental terms in their own operations and in the supply chain
- 2.2. adopted routines to convey their commitment to respect the fundamental terms in their own operation and in the supply chain
- 2.3 assigned the responsibility for compliance with the fundamental terms to a member of senior management
- 2.4 adopted routines to regularly carry out risk analyses, i.e. to identify and prioritise current and potential risks of deviation from the fundamental terms, as well as mapping the supply chain with special regard to high risk operations
- 2.5 adopted routines for regular follow-up of compliance with the fundamental terms, and
- 2.6 adopted routines to take immediate action to prevent and limit deviations from the fundamental terms, and to address identified deviations

The measures shall be taken in accordance with the UN Guiding Principles on Business and Human Rights, or the equivalent.

§3 Follow-up

The contracting authority has the right to follow-up that the supplier fulfils its obligations. The follow-up may be carried out in different steps; self-assessment and audit.

3.1 Self-assessment

Upon request from the contracting authority the supplier shall, within six (6) weeks from the receipt of the request or another time period specified by the contracting authority, report in writing on their compliance with the fundamental terms. The account can be submitted by filling in the contracting authority's self-assessment questionnaire (appendix 1: self-assessment questionnaire) or in accordance with other instructions given by the contracting authority.

3.2 Audit

The supplier shall enable the contracting authority to perform audits of the supplier and/or its subcontractors, on their own or through a representative, to ensure that the supplier fulfils the obligations according to clause 1 and complies with the fundamental terms. The supplier shall provide the information and documentation necessary in connection with the audit to verify compliance with the terms.

§4 Sanctions

If the supplier does not participate in the follow-up or if there are non-conformities in the documentation to be provided under clause 3, the contracting authority is entitled to claim one or more of the following sanctions against the supplier.

- a) Demand corrective action: When the audit shows that the supplier does not comply with the fundamental terms, the supplier must produce a time and action plan within the time specified by the contracting authority. The plan must be reasonable in relation to the nature of the breaches and clearly describe how they should be addressed within the stated time. The plan is subject to the contracting authority's approval.
- b) Penalties: If the supplier does not adhere to the approved timetable and action plan, does not take such measures as are required under a), or does not fulfil its obligations under clause 3, the contracting authority is entitled to demand that the supplier pay a penalty of [xx SEK or% of the contract value] per commenced week as long as the breach of contract lasts.
- c) [In the event of a framework agreement] Call-off stop. If the supplier does not:
 - produce a time and action plan in time according to clause 4.a,
 - follow the approved time and action plan, or
 - within reasonable time address the deviations that have emerged in the audit in accordance with clause 3

the contracting authority may exempt the supplier from the right to receive call-off requests under the framework agreement until the contracting authority has approved that the supplier has rectified the breach of contract or it is clear to the parties that the breach of contract has ceased.

During the time that the call-off stop applies, the contracting authority is entitled to make a call-off from another supplier under the framework agreement or, if no such supplier exists, procure the product/service from another supplier. The client is also entitled, in accordance with clause 4.d, to cancel the framework agreement in whole or in part.

- d) [In the event of a contract] Termination: The contracting authority has the right to terminate the contract with immediate effect if the supplier does not rectify within the specified time according to clause a) or does not remedy deviations according to the established time and action plan.

The contracting authority also has the right to terminate the contract with immediate effect in the event of serious violations of the fundamental terms.

Guidelines – Contractual terms sustainable supply chains

Throughout the entire contract period, the supplier shall apply the contractual terms in accordance with clauses 1 - 4. The contract shall be executed in accordance with the fundamental terms for sustainable supply chains.

1

The supplier's obligation

The supplier shall, in accordance with clause 2, ensure that the fundamental terms are fulfilled by hired subcontractors in all parts of the supply chain.

GUIDELINES

The supplier's liability concerning the fundamental terms encompasses all levels of the supply chain and are not limited to subcontractors directly contributing to the performance of the contract. The risks determine the extent of the liability. The UN Guiding Principles on Business and Human Rights make it clear that it is not sufficient that companies only work with their direct suppliers. That is rarely where the greatest risks of adverse impact on human rights are to be found. For that reason, it is the responsibility of the companies to ascertain where in the supply chain the most severe risks for adverse impact can be found, and to prioritize their efforts accordingly. Based on their risk analysis, the supplier shall therefore be able to ascertain where in the supply chain severe risks can be found and reduce those risks by taking appropriate measures. This obligation applies to all operations associated with the performance of the contract and therefore includes any commissioned subcontractors.

The liability of the suppliers applies fully and equally to all companies, irrespective of industry, the environment in which the

business operates, ownership arrangements or structure. However, the way in which the companies fulfil their obligation may vary, depending on these factors and depending on the severity of the adverse impact of the company on the fundamental terms.¹ Small and medium-sized companies can have more informal processes and structures compared to a large corporation, but small and medium-sized companies can also have a severe adverse impact, which entails a responsibility to manage it. How severe the adverse impact is depends on its severity, and whether it can be remedied². In accordance with the guiding principles, the supplier is always responsible for being aware of the risks in their supply chains and continuously working to address those risks.

The supplier shall be able to describe the risks concerning the product/service – from raw material, to manufacturing, to finished product – and to present activities and actions taken to address these risks. The relevant actions to be taken depend primarily on the severity of the risk but can also depend on the supplier's influence over stakeholders in the supply chain. A company's sphere of influence refers to the extent to which an organisation is able to influence the decisions or activities of other organisations. The supplier is liable for any impact that is a consequence of decisions and activities over which they have formal or de facto control. De facto control means that the supplier has an opportunity to influence the decisions and activities of a business, even if they have no legal or formal authority to do so.³ The supplier may also have an opportunity to influence the behaviour of other operations with which they have associations. In some

¹ UNGP 14

² UNGP 14

³ SIS, ISO26000

situations, the supplier is liable for exercising such influence. If the supplier has no such influence, they shall take steps to increase it, for example by collaborating with other stakeholders.

2 Policies and procedures

To fulfil the obligations as listed in clause 1, the supplier shall take measures to prevent and manage any deviations from the fundamental terms according to clauses 2.1-2.6 below.

The measures shall be documented and applied continuously throughout the entire contract period in the supplier's own operations as well as in the operations of subcontractors in all levels of the supply chain.

The measures shall be taken in accordance with the UN Guiding Principles on Business and Human Rights, or the equivalent.

GUIDELINES

The supplier shall fulfil the obligation by taking steps to prevent and manage any deficiencies concerning compliance with the fundamental terms. The second clause of the contractual terms clarifies the procedures that the supplier is expected to have in place in order to have the prerequisites for this. The procedures are based on the due diligence process presented in the UN Guiding Principles on Business and Human Rights. The aim of the procedures is to create the conditions for effective risk management in the supply chain. The procedures shall be proportional to the risks that the supplier faces in its own operations and its supply chain.

2.1 Policy obligation

At the start of the contract the supplier shall have a publicly accessible policy, approved at the most senior level of the business enterprise including a commitment to respect the fundamental terms in their own operations and in the supply chain

AIM

The aim of the policy obligation is to ensure that the supplier is aware of its responsibility, and that they act to respect the fundamental terms. The policy obligation shall also ensure that this responsibility is supported throughout the operations. It shall also be available to business partners and other stakeholders associated with the supplier's operations.

ASSESSMENT CRITERIA

To comply with requirement 2.1 concerning policy obligation, the supplier shall have adopted a policy that:

- ✓ at a minimum, encompasses the fundamental terms,
- ✓ has been approved at the highest executive level in the company,
- ✓ is publicly available, such as in the workplace or on the company website.

GUIDELINES

A policy obligation is a publicly available declaration of intent, describing what the supplier's obligations, responsibility and expectations are in relation to the fundamental terms. The obligation applies to the company's own operations, throughout the supply chain, as well as in other business relations. The supplier's obligation concerning the fundamental terms can be expressed in one single policy or in several separate policies. It can also be integrated into one of the supplier's governing documents, such as a code of conduct.

The policy obligation shall focus on risks related to in-house operations and business

relations. It should not only focus on charity projects or general sustainability obligations. For the policy obligation to achieve the correct status within the supplier's organisation, it must be adopted by the executive management. The policy should be continuously updated with new information about risks in the supply chain.

FIND OUT MORE!

- The UN Guiding Principles on Business and Human Rights (principle 16)
- OECD Due Diligence guidance for Responsible Business Conduct
- Developing a Policy Commitment and Embedding Respect for Human Rights
- The UN Universal Declaration of Human Rights;
- The ILO Declaration on Fundamental Principles and Rights at Work
- The Children's Rights and Business Principles (UNICEF)
- The UN Convention against Corruption

2.2 Communicating the policy commitment

At the start of the contract the supplier shall have adopted routines to convey their commitment to respect the fundamental terms in their own operation and in the supply chain

AIM

The aim of requesting that the supplier informs their employees and subcontractors of their commitment is so that the obligation will be conveyed to all the relevant stakeholders. It concerns stakeholders that themselves are expected to introduce a corresponding obligation in their own operations (such as suppliers and sub-contractors), as well as stakeholders that are interested in its implementation (such as business relations, investors, consumers and NGOs). It also concerns individuals or groups that may be adversely impacted by the supplier's operations.

ASSESSMENT CRITERIA

To comply with requirement 2.2 concerning communicating the obligation, the supplier

- ✓ shall inform all employees in the company about the obligation,
- ✓ communicate the obligation to respect the fundamental terms, in writing, to the suppliers with whom they have a contractual relation (1st tier),
- ✓ describe how it ensures that the fundamental terms are communicated from suppliers with whom they have contractual relations (1st tier), and further along the supply chain.

GUIDELINES

Communicating the policy obligation aims to ensure that stakeholders, suppliers and sub-contractors at different stages of the supply chain are made aware of the supplier's obligation to respect the fundamental terms. In addition, they are encouraged to act in accordance with the obligation. Frequently, there are greater risks concerning human rights, working conditions, environmental conditions and corruption in sub-contracting tiers. For that reason, it is important that the supplier communicates the responsibility, and imposes requirements in these tiers as well. For that reason, a supplier may impose requirements on their direct suppliers, and draw up agreements in which they demand that they in turn communicate corresponding terms throughout their supply chains.

Operations with which the supplier has business relations shall be informed about the obligation. It is not sufficient that a policy is available to the sub-contractor, instead it should be appended and referred to in the agreements. When required, it shall also be translated into local languages. Other stakeholders that should be informed are those that are directly linked to parts of the supplier's operations that are relevant to the agreement, as well as those at risk of being adversely impacted by non-compliance with the obligation. The policy obligation shall also be supported all the way from executive management to the

employees concerned, who might otherwise act without being aware of the obligation or without considering it. The obligation may be communicated through relatively simple means, such as publishing it on the supplier's website or internet, introducing contractual terms linked to the obligation in agreements with suppliers, or by having a dialogue about the obligation internally and externally. In addition, the supplier can provide training and promote capacity building in the supply chain in order to raise awareness of the fundamental terms in different tiers of the supply chain.

FIND OUT MORE!

- The UN Guiding Principles on Business and Human Rights (principle 16)
- OECD Due Diligence Guidance for Responsible Business Conduct

2.3

Division of responsibility

At the start of the contract the supplier shall have assigned the responsibility for compliance with the fundamental terms to a member of senior management

AIM

The aim of requesting a clear division of responsibility is to ensure that the supplier has appointed people to be responsible of ensuring compliance with the fundamental terms/policy obligation at the executive level. It also provides the procuring agency with information about the position which is responsible for ensuring compliance with the fundamental terms within the supplier's own operations and throughout the supply chain.

ASSESSMENT CRITERIA

To comply with requirement 2.3 concerning division of responsibility, the supplier:

- ✓ shall have appointed one or more people at the executive level to be responsible for matters concerning the fundamental terms,
- ✓ shall have made clear what that responsibility entails.

GUIDELINES

For a supplier policy obligation to be effective and complied with, an internal division of responsibility is required. Ultimately, the executive management is responsible for complying with the obligation and for that reason, the responsibility needs to be appointed to someone in the management team. It is also important that the supplier ensures that those responsible have relevant expertise within each area of responsibility. The division of responsibility can of course differ depending on the size and structure of the supplier, but one or more people in executive positions shall have the ultimate responsibility. The day-to-day responsibility can then be delegated within the organisation. In addition to securing support for the obligation in the executive management, the supplier can also work to secure support throughout the organisation itself. They can help employees to minimise risks in their day-to-day work by giving due attention to and supporting due diligence of the fundamental terms, allocating resources for due diligence, and ensuring that staff working on due diligence are given the time and training required for the task.

FIND OUT MORE!

- The UN Guiding Principles on Business and Human Rights (principle 19)
- OECD Due Diligence Guidance for Responsible Business Conduct

2.4

Risk analysis

At the start of the contract the supplier shall have adopted routines to regularly carry out risk analyses, i.e. to identify and prioritise current and potential risks of deviation from the fundamental terms, as well as mapping the supply chain with special regard to high risk operations.

AIM

The aim of requesting that the supplier conducts risk analyses is to ensure that the supplier regularly identifies severe risks for non-compliance with the fundamental terms. Risk

analyses contribute to increased transparency in the supply chain and may provide information to the procuring agency about how the supplier prioritises their risks.

ASSESSMENT CRITERIA

To comply with requirement 2.4 concerning risk analyses, the supplier:

- ✓ shall describe the identified risks for products or services under the contract,
- ✓ shall map the supply chain, with particular consideration given to high-risk operations,
- ✓ shall describe how they identify current and potential risks in the supply chain concerning compliance with the fundamental terms,
- ✓ shall describe how they prioritise their risks according to level of severity.

GUIDELINES

Risks are constantly changing in response to new business relations, production changes, new laws, etc. Risk in this instance refers to risk of non-compliance with the fundamental terms. Risk analyses needs to be conducted on a regular basis. The risk analysis shall be relevant to the part of the supplier's operations that concern products or services provided under the contract(s). It cannot be a general risk analysis that processes general sustainability risks. It is important to stress that identifying a risk does not, in itself, entail non-compliance with the contractual terms. It is important to present the risks that exist. What is crucial is how these risks are then managed.

Mapping the supply chain, with consideration given to high-risk operations

Knowing your supply chain is essential for identifying and managing relevant risks of non-compliance with the fundamental terms. The length and complexity of the supply chain also affects the risk of non-compliance. For that reason, it is important that both the supplier and the procuring agency are familiar with the supply chain in order to be able to determine the actions to take. It is also important to know the type of business in which the companies in

the supply chain are operating, such as whether they are wholesalers or producers, as well as where they operate. How the supplier conducts the mapping of the supply chain may vary, depending on the information to which they have access. If the supplier has full access to where the production takes place, they can conduct a detailed survey with specified information. If the supplier has limited access to where the production takes place, the investigation can be conducted partly with specified information, partly with publicly available information, as well as assumptions about where production may be taking place. If the supplier has very limited information about the supply chain, the mapping can be based entirely on publicly available information, as well as assumptions about where production is assumed to take place. If the supplier has limited access to the supply chain, they shall take the necessary steps to increase knowledge with the aim to continuously map the supply chain in order to confirm potential risks. A process for increasing traceability in the supply chain therefore constitutes a natural part of the risk analysis process.

Identifying risks

A risk analysis is based on the supplier's own insight into the operations and the supply chain, as well as on reports and analyses from established organisations and expert bodies. This may include reports from UN bodies and organisations such as Amnesty International, International Trade Union Confederation, Freedom House and Transparency International. The stakeholder dialogue is crucial for the risk analysis, and the process should be based on internal and independent external expertise, as well as including consultation on tangible risks with individuals, their representatives and groups that may be impacted. It is important to ensure that all types of risks are captured by the risk analysis, which requires dialogue with different types of stakeholders, as well as information gathering from different types of sources. A risk analysis of corruption risks will require different sources of information than, for example, a risk analysis of environmental risks. To identify risks of non-compliance with the fundamental terms, it is also important that

the supplier is very familiar with national legislation concerning the fundamental terms.

Prioritising risks

After conducting a risk analysis, the supplier, when required, needs to prioritise the risks that must be managed first. Prioritisation shall be done according to the level of severity of the potential adverse impact. The more severe the adverse impact is on the fundamental terms, the higher the priority that the supplier should assign to the matter. In assessing what is a severe adverse impact, the supplier should consider the scale (how severe the impact is), the scope (the number of people impacted) and whether it is irrevocable in character (the possibility of rectifying the situation and compensating those affected). That is, an impact that is temporary, impacts few people, and which can easily be restored is not as severe as an impact that affects people permanently, affects more people or cannot be rectified, such as fatalities or permanent damage.

When prioritising, the supplier can also take into consideration particularly vulnerable groups such as children, women, ethnic minorities or indigenous people. In addition, the supplier should consider the impact throughout the entire supply chain, focusing on the most severe risks. This process should also be based on internal and/or independent external expertise and include meaningful consultations with groups and other relevant individuals that may be impacted.

FIND OUT MORE!

- The UN Guiding Principles on Business and Human Rights (principles 17, 18, 21 & 24)
- OECD Due Diligence Guidance for Responsible Business Conduct
- Assessing Human Rights Impacts
- Fighting Corruption in the Supply Chain Good Practice Guidelines on Conducting Third Party Due Diligence (Partnering Against Corruption Initiative)
- ICC Anti-Corruption – Third Party Due Diligence: A Guide for Small and Medium-sized Enterprises

2.5

Follow-up

At the start of the contract the supplier shall have adopted routines for regular follow-up of compliance with the fundamental terms.

AIM

The aim of requesting that the supplier has follow-up procedures is to ensure that the supplier, as part of their risk management process, checks compliance with the fundamental terms in the supply chain. In addition, it provides the procuring agency with insight into whether the steps taken by the supplier to prevent non-compliance have the desired effect.

ASSESSMENT CRITERIA

To comply with requirement 2.5 concerning follow-up, the supplier:

- ✓ shall describe the activities the company undertakes to manage identified risks in their own operations and in the supply chain for the products and services within the contract,
- ✓ shall describe how systematic follow-up of compliance with the fundamental terms in their own operations and in the supply chain is conducted, such as how suppliers and sub-contractors are selected for follow-up in relation to the identified risks.

GUIDELINES

The follow-up requirement is necessary to ensure that the supplier manages the risks of non-compliance with the fundamental terms in an effective manner and takes steps towards continuous improvements. The follow-up should be based on the risk analysis, with particular focus on severe risks and risks that impact vulnerable groups or people who are under greater risk of being impacted.

It may in some instances be difficult for the supplier to assess sub-contractors in the supply chain, due to a lack of access and influence. However, this does not diminish the supplier's responsibility for managing risks

throughout the supply chain. In these situations, the supplier shall take appropriate steps to monitor and manage the risks under the available circumstances. Collaboration with other organisations and joint industry initiatives is one way of achieving this and is increasingly common for managing common challenges in supply chains.

Follow-up method

The follow-up may be conducted in different ways, such as through self-assessment surveys, in-house or third-party audits, or complaints mechanisms. Measures to improve the subcontractors' capacity may also be part of the follow-up, through training for example. If parts of the supply chain have been reviewed within the scope of some existing social standard, such as SA8000, RBA or Fair Wear Foundation, these may also form part of the follow-up. The follow-up method may vary depending on the risk, the supplier in question and the products or services. However, it is crucial that any action is directly linked to the identified risk, and not general steps to strengthen the supplier's sustainability profile. Actions may include a request for information from sub-contractors about how the risks have been managed, on-site audits to verify compliance, training at the subcontractors' premises to raise awareness, setting up complaints' mechanisms, renovating factory premises, purchasing protective gear, etc.

Audits

Auditing is a common follow-up method that may provide the supplier with results that are comparable over time or with country and industry averages. Audits may be conducted by the supplier themselves, or through a third party. Depending on the step in the supply chain that is audited, audits may differ. When conducting an audit of a sub-contractor that is a wholesaler in a country with a low risk of non-compliance with the fundamental terms, it is more relevant to review the wholesaler's procedures and processes for communicating the requirements and checking compliance upstream. But if you are assessing compliance at a factory where the product is manufactured, a factory, or on-site, audit is required. An on-site audit generally consists of

three steps: (1) document review, (2) interviews with management and employees, and (3) inspection of the workplace and any housing arrangements. An audit report subsequently presents the results of these three steps, reports any non-compliance and presents proposed remedies.

A smaller supplier may have limited opportunities to conduct their own audits, but they may have a larger company as a sub-contractor conducting audits in the supply chain. In such instances, the supplier can review those audit reports as part of their own risk management systems.

Complaints' mechanisms

In addition to follow-up in the form of self-assessment surveys and audits, complaints mechanisms are an important channel for gathering information about compliance with the fundamental terms. Well-functioning complaints mechanisms may provide the supplier with continuous information about potential non-compliances that may be difficult to discover during an audit.

It is common that larger companies set up their own complaints' mechanisms where employees or other stakeholders are able to draw the company's attention to potential non-compliance with the fundamental terms. These do not always function very well as they frequently use phone numbers or email addresses that are located in countries that are at a considerable distance from the manufacturing country. A more effective solution is to set up such bodies in partnership with local organisations that have a direct channel to the employees and the local population. This is a field where it may be appropriate to partner with other companies or stakeholders.

FIND OUT MORE!

- The UN Guiding Principles on Business and Human Rights (principles 20 & 21)
- OECD Due Diligence Guidance for Responsible Business Conduct

- ICC Anti-Corruption – Third Party Due Diligence: A Guide for Small and Medium-sized Enterprises

2.6 Compliance management

At the start of the contract the supplier shall have adopted routines to take immediate action to prevent and limit deviations from the fundamental terms, and to address identified deviations

AIM

The aim of requesting that the supplier has procedures for compliance management is to ensure that they have internal processes to immediately manage any non-compliance with the fundamental terms caused by their operations or to which their operations have contributed. The procedures shall also ensure that the supplier contribute to compensating those who were adversely impacted by the non-compliance, if appropriate.

ASSESSMENT CRITERIA

To comply with requirement 2.6 concerning compliance management, the supplier:

- ✓ shall report whether there has been any non-compliance with the fundamental terms during the contract period, concerning products or services under the contract, and if so, describe how such non-compliance has been managed,
- ✓ describe how systematic compliance management is set up in their own operations and in the supply chain, considering the nature and severity of the non-compliance.

GUIDELINES

If the production of goods or services takes place in high-risk countries and high-risk industries, it is probable that the follow-up will lead to non-compliance being discovered. However, the fact that non-compliance is discovered also means it can be remedied. The supplier must be able to account for any actual steps taken in connection with the non-compliance that has been discovered, as well

as a remedial schedule. It is important to stress that in some countries, there may be non-compliance as a consequence of national legislation. In China, for example, the only permissible union All-China Federation of Trade Unions is controlled by the state, which means that the ILO core conventions 87 and 98 are not respected there. It is not reasonable to demand that suppliers shall break national laws, such situations instead require special measures. In spite of the ban on independent unions in China, it is for example possible for employees at a factory to elect local worker representatives. It is also possible to have dialogue between employees and management. Such a situation requires the supplier to work actively with these matters in their supply chain, as part of compliance management.

Identifying the cause

To prevent non-compliance from recurring, it is important to conduct so-called root cause analyses (RCAs). It involves finding the cause behind non-compliance in order to effectively remedy it. One example of this is illegal overtime. To remedy such non-compliance it is not sufficient to conclude that employees are working overtime in excess of national or international regulations, and demanding that this ceases. It is also necessary to find the cause that is leading to employees working overtime. Are they being forced by management? Are they choosing to work overtime because of low wages? Or could there be other causes? This enables you to tackle the root of the problem in order to achieve a long-term solution. Otherwise, you risk identifying the same non-compliance year after year, with no real improvement.

Appropriate action

The UN guiding principles distinguish between the companies' ability to influence depending on whether the company is causing, contributing to or linked with the non-compliance. The supplier is considered to cause a violation when it happens within its own operation. A company is considered to be contributing to a non-compliance in the supply chain if there is a clear connection between operation, the product or services, and the

violation. When a supplier's operations cause or may cause non-compliance with the fundamental terms, the supplier should immediately take steps and, if necessary, cease the activity in order to prevent non-compliance. When a supplier's operations contribute to or may contribute to non-compliance, they should take steps to cease the activity in order to prevent non-compliance and use their influence to limit any additional impact. When a supplier has not themselves caused or contributed to adverse impact but are still linked to operations where non-compliance has been discovered, the situation is more complex. The assessment to ascertain which measure is most appropriate is affected by two factors: the severity of the non-compliance and the supplier's influence over the operations in question. The supplier is still responsible for contributing to remedying the situation. Thus, the supplier has a responsibility for remedying and compensating those affected by any non-compliance, irrespective of whether they caused it, contributed to it or are linked to it. However, the appropriate steps to take may differ between the different scenarios.

Schedule for managing non-compliance

Remedial measures for non-compliance must have a schedule for when such measures must be taken and for when follow-up will be conducted to verify it. The degree of severity of the non-compliance is crucial for implementing the measures. For example, if it relates to life-threatening danger as a consequence of failing safety devices, remedial measures must be taken immediately before the equipment can be used again. If the non-compliance is more procedural in nature, such as if a sub-contractor lacks a policy for preventing child labour, the time frame may be longer. The precise time frame must be determined on a case-by-case basis. The measures and schedule must be clearly documented and communicated to the relevant party. Supporting documentation includes audit reports specifying the non-compliance, a corrective action plan, time plan, as well as who in the organisation is responsible for making it happen.

Terminating agreements

When suppliers discover instances of non-compliance in the supply chain, they should firstly try to remedy them in collaboration with suppliers and sub-contractors. Terminating agreements with suppliers, or demanding that suppliers cancel agreements with sub-contractors, rarely benefit those who were impacted by the non-compliance, as influence is reduced outside a contractual relationship. Terminating a contract may still in some instances be necessary, for example when suppliers or sub-contractors do not act in accordance with the remedial plan and the agreed time frames.

FIND OUT MORE!

- The UN Guiding Principles on Business and Human Rights (principle 22)
- OECD Due Diligence Guidance for Responsible Business Conduct

3

Follow-up

The contracting authority has the right to follow-up that the supplier fulfils its obligations. The follow-up may be carried out in different steps; self-assessment and audit.

GUIDELINES

The contractual terms for sustainable supply chains are followed up throughout the contract period. The follow-up is conducted through a step-wise process and may include self-reporting and office audits, as well as factory audits. The dialogue between regions and the supplier is also an important part of the follow-up process. When a follow-up is initiated, a request is sent out to all regions about participating in the coordinated follow-up. The agreements that are reported subsequently form the basis for the follow-up within the scope of the national coordination for sustainable procurement. Before the follow-up, a product or product area is also selected as the subject of the follow-up.

3.1

Self-reporting

Upon request from the contracting authority the supplier shall, within six (6) weeks from the receipt of the request or another time period specified by the contracting authority, report in writing on their compliance with the fundamental terms. The account can be submitted by filling in the contracting authority's self-assessment questionnaire or in accordance with other instructions given by the contracting authority.

GUIDELINES

The first step in a follow-up is that the supplier reports in writing how they comply with the contractual terms. The written report is submitted as a self-reporting form. When self-reporting, the supplier is asked to describe the risks and risk management activities conducted for the selected product/product group, as well as describing the procedures underlying those activities. The procedures shall also ensure that any future risks are being addressed and prevented. When the region has received the supplier's response, assessment is made as to whether the follow-up should be complemented with an office audit. In addition to the general self-reporting, the supplier may be asked to respond to questions linked to specific risks, such as environmental risk or risks of corruption.

3.2

Auditing

The supplier shall enable the contracting authority to perform audits of the supplier and/or its subcontractors, on their own or through a representative, to ensure that the supplier fulfils the obligations according to clause 1 and complies with the fundamental terms. The supplier shall provide the information and documentation necessary in connection with the audit to verify compliance with the terms.

GUIDELINES

To check the suppliers' compliance with the requirements, the procuring agencies may choose to conduct audits. An audit takes place

either at the supplier's offices or at a factory. A factory audit can be conducted at the supplier's own factories, or at the factories of their sub-contractors. It is the supplier's responsibility to ensure that the procuring agency has the possibility to conduct this type of audit, as well as to ensure that key personnel and correct documentation is at hand during the audit. An audit can be conducted at any step in the supply chain associated with the performance of the contract.

4

Managing deficiencies

If the supplier does not participate in the follow-up or if there are non-conformities in the documentation to be provided under clause 3, the contracting authority is entitled to claim one or more of the following sanctions against the supplier.

GUIDELINES

The contractual terms, including the fundamental terms, constitute an integral part of a contract with the supplier. They comprise supplier obligations and are therefore linked to sanctions if the supplier is in breach of contract. A breach of contract may concern failure to participate during follow-up or self-reporting. It may also concern failure to comply with the fundamental terms at the supplier's own premises or at the premises of any sub-contractors'.

4.1

Requesting remedy

When the audit shows that the supplier does not comply with the fundamental terms, the supplier must produce a time and action plan within the time specified by the contracting authority. The plan must be reasonable in relation to the nature of the breaches and clearly describe how they should be addressed within the stated time. The plan is subject to the contracting authority's approval.

GUIDELINES

If the supplier does not participate during the follow-up or if there are non-conformities in the documentation to be provided, the supplier shall initially be given an opportunity to correct it. If the supplier or any sub-contractors do not comply with the terms, the supplier shall be given an opportunity to remedy this. This should be done in accordance with an action plan drawn up by the supplier within a time frame set by the procuring agency. The action plan shall also be approved by the region.

4.2

Penalties & call-off stops

If the supplier does not adhere to the approved timetable and action plan, does not take such measures as are required, or does not fulfil its obligations, the contracting authority is entitled to demand that the supplier pay a penalty per commenced week as long as the breach of contract lasts.

The contracting authority may exempt the supplier from the right to receive call-off requests under the framework agreement until the contracting authority has approved that the supplier has rectified the breach of contract or it is clear to the parties that the breach of contract has ceased.

If the supplier does not remedy deviations in accordance with the set action plan, the region may take steps in accordance with the fourth clause of the contractual terms. Firstly, the region may impose a penalty. The penalty is imposed in order to exert pressure until the supplier takes the necessary steps to remedy the non-compliance. It could for example be applied if the region does not receive requested documentation in time. The next step is when the supplier requests a call-off stop (this only applies to framework agreements), which means that the procuring agency has the right to exempt the supplier from call-off requests in accordance with the framework agreement until they can show that the faults have been remedied. During the call-

off stop period, the procuring agency has the right to make call-offs from another framework agreement supplier or, if none exist, procure the good or service from another supplier. If the supplier, after these measures have been taken, still does not remedy the deviations, this may constitute grounds for termination of the contract, effective immediately. This applies in instances of recurring non-conformities in the self-reporting, recurring deficiencies in follow-up participation, if remedial action is not taken within the set time, or if deficiencies in compliance with the terms are not remedied in accordance with the set action plan.

4.3

Termination

The contracting authority has the right to terminate the contract with immediate effect if the supplier does not rectify within the specified time or does not remedy deviations according to the established time and action plan. The contracting authority also has the right to terminate the contract with immediate effect in the event of serious violations of the fundamental terms.

GUIDELINES

The procuring agency has the right to terminate the contract, effective immediately, if serious failure to comply with the terms is discovered. If such serious failure is revealed through a factory audit, regions are recommended to initially ensure that the supplier remedies the situation and compensates those impacted.

Appendix 1

Sweden's regions' and county councils' Code of Conduct for suppliers

Last modified: 4 February 2013

Code of Conduct for Suppliers

The Swedish County Councils are responsible for providing equal access to good healthcare, dental care and public transport, for all residents. It is important for us to conduct our operations in a way that supports sustainable development. In accordance with this, we work to ensure that goods and services procured are manufactured under sustainable and responsible conditions.

We expect suppliers to comply with this Code of Conduct and that they do their utmost to live up to its requirements within their own organisations and in the supply chain. This should take place through dialogue, transparency and open cooperation between the Swedish County Councils and suppliers – benefitting both parties.

Goods and services that are supplied to the Swedish County Councils should be produced under conditions that are in accordance with:

- The United Nations Universal Declaration of Human Rights (1948)
- The Eight Fundamental Conventions of the International Labour Organisation, no. 29, 87, 98, 100, 105, 111, 138 and 182
- The United Nations Convention on the Rights of the Child, Article 32
- The labour protection and labour environment legislation in force in the country of production
- The labour law, including legislation on minimum wages, and the social welfare protection regulations in force in the country of production
- The environmental protection legislation that is in force in the country of production
- The United Nations Convention against Corruption

The United Nations Universal Declaration of Human Rights (1948)

The supplier shall support and respect human rights

The supplier has a responsibility to respect and support human rights both within its own operations and in the supply chain.

The supplier shall ensure that it does not participate, directly or indirectly, in violations of human rights. This also includes situations when the supplier fails to pose questions on violations of human rights or benefits from violations that are carried out by a third party. The supplier shall have routines in place to evaluate risks of participating in violations of human rights through its operations.

International Labour Organisation (ILO), Eight Conventions on Fundamental Principles and Rights at Work and the United Nations' (UN) Convention on the Rights of the Child (CRC)

Child labour is prohibited (ILO no. 138 and 182, UN CRC article 32) 2

Child labour refers to all economic activity which is carried out by a person of compulsory school-going age or younger. No employee may be under the age of 15 (or 14 if national legislation allows for this), or younger than the minimum age of employment, if this age exceeds 15 years. Youth between the ages of 15 and 18 may work with non-hazardous operations, under the precondition that they have reached the legal age of employment and have completed compulsory national education. If child labour is detected, the supplier shall act based upon the best interests of the child and find suitable solutions in consultation with the child and the family of the child.

Forced labour is prohibited (ILO no. 29 and 105)

Forced labour refers to labour or services exacted under the menace of any penalty and for which the said person has not offered himself voluntarily. Forced labour, including slave labour, bonded labour or involuntary prison labour shall not take place. All labour shall be voluntary, and the employee shall have the right to terminate employment following a reasonable term of notice.

Discrimination and harassment is prohibited (ILO no. 100 and 111)

Discrimination refers to any distinction, which is not based on the merits or qualities of a particular job, but involves differential treatment based upon biased grounds. The supplier shall support diversity and equal opportunities in employment. Discrimination on the basis of race, sex, marital status, pregnancy, religion, social or ethnic origin, nationality, physical ability, political opinion, union membership or sexual orientation may not take place.

Harassment refers to instances when employees are subject to harsh or inhuman treatment, including sexual harassment or other forms of psychological or physical punishment. Harassment may not take place.

Freedom of Association and Collective Bargaining (ILO no. 87 and 98)

Freedom of association and collective bargaining refers to formalised and/or non-formalised forms of cooperation in order to support and defend employees' interests at the workplace and in the relationship between employers and employees. The supplier is expected to recognise and respect the rights of employees (and employers) to organise, to join organisations in which they themselves choose to participate, as well as the right to collective bargaining. In countries where freedom of association is limited or under development, the supplier shall support instances where employees may meet management in order to discuss wage and labour conditions without the risk of negative sanctions.

Legislation

The supplier must fulfil local laws and regulations in the countries in which they operate.

Wages and hours of work

Wages shall be paid directly to the employee within the agreed upon timeframe and in full. The supplier shall support the payment of living wages to employees, and under no circumstances support the payment of less than the national or locally stipulated minimum wage. Overtime compensation shall be paid and clearly specified in wage statements.

Employees shall have at least one day of rest per week. Working hours shall not exceed legal limits or a maximum of 60 hours per week, including overtime. Leave, including vacation, holidays, sick leave and parental leave shall be compensated in accordance with national legislation.

Safe and Hygienic Working Environment (ILO no. 155 and 170)

A safe and hygienic working environment refers to the employee, when she/he is present in an area that the employer has direct or indirect control over, being guaranteed to be free from or protected from conditions which can constitute a hazard for the employee's physical and or psychological health. The employee working within the operations of the supplier shall be provided a safe and healthy working environment where preventative measures shall be taken which reduce injury and risks to health.

Employees shall receive training on the potential health risks that the work can entail, including fire safety, hazardous operations and first aid. The employer shall, to the extent that it is possible, provide relevant protective equipment and ensure that information on health and safety is readily available at the workplace.

Emergency exits shall be clearly marked, illuminated and may not be blocked. Evacuation exercises and the testing of fire alarms shall be conducted on a regular basis.

Environment

Suppliers shall conduct their operations responsibly in relation to the environment and comply with local and national environmental legislation. Through a structured and systematic approach or the identification, measurement and follow-up of its environmental impact, the supplier shall aim to continually improve its environmental performance and minimise the use of resources and the

production of waste. The supplier shall aim towards employing a life-cycle perspective concerning environmental impact from products and services and shall place environmental requirements on subcontractors.

UN Convention against Corruption

The supplier shall not directly or indirectly offer undue payment or other forms of compensation to any person or organisation with the aim of obtaining, maintaining or directing business operations or receive other undue advantages within the framework of its operations.

The supplier shall not directly or indirectly request or accept any form of undue payment or other forms of compensation from a third party which can affect the objectivity of business decisions.

Compliance

Transparency in the supply chain is required in order to guarantee compliance with the Code of Conduct. In order to assess compliance, the Swedish County Councils will conduct reviews, request documentation, conduct on-site audits, review and approve action plans and monitor the implementation of these plans. Suppliers are encouraged to take relevant measures in order for the content of this Code of Conduct to be implemented in their own operations, as well as in the supply chain.

Updates

This Code of Conduct will be updated as and when necessary. For more information on the Swedish County Councils' commitments, see our website at www.hallbarupphandling.se.

Reporting Violations

Violations of the Code of Conduct can be reported in one of the following ways:

Email: coc.lsf@sll.se

Post: Nationella Kansliet Hållbar Upphandling

Upphandlingsavdelningen

Fleminggatan 20, 2 tr.

Box 22550

104 22 Stockholm



Sustainable public **PROCUREMENT**

A collaboration between the Swedish regions

Blekinge – Dalarna – Gotland – Gävleborg – Halland – Jämtland/Härjedalen – Jönköping –
Kalmar – Kronoberg – Norrbotten – Stockholm – Sörmland – Skåne – Uppsala – Värmland –
Västerbotten – Västernorrland – Västmanland – Västra Götaland – Örebro – Östergötland