



Education  
Funding  
Agency

# **Funding guidance for young people**

## **Sub-contracting controls**

**August 2013**

**This document updates and replaces from August 2013 the EFA Funding guidance for young people 2012 to 13: Funding regulations: Section 7**

**Of interest to local authorities, institutions and other stakeholders involved in managing and delivering EFA funded provision through sub-contractors**

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# Sub-contracting provision controls guidance

## Introduction

1. This document sets out the EFA compliance and control requirements and advice for all directly funded institutions that use third parties to deliver provision that is funded by the EFA. Institutions with no third party delivery arrangements will not need to use this document.
2. Directly funded institutions include all institutions that are either directly funded by the EFA or are directly funded by local authorities using EFA funding that includes all maintained schools, academies, free schools, sixth form and FE colleges and independent institutions. The EFA would not expect this guidance to be needed where directly funded institutions agree to assist each other in their individual local delivery arrangements to students.
3. Third party delivery arrangements, often referred to as either sub-contracted or franchised provision, have created substantial financial and reputation issues for institutions in the past. Problems have been particularly significant where the sub-contracted delivery has taken place at a distance from the directly funded institution, in a different part of the country. In some cases institutions have had to make substantial repayments for activity ruled ineligible after audit investigation.
4. Given the known risks of irregularity in distance sub-contracting, the EFA will not normally fund 16-19 provision sub-contracted by institutions outside their normal recruitment areas. 'Normal recruitment area' means the area from which most 16-19 students travel to learn at the institution and this is explained in companion document *Funding regulations* paragraphs 52 to 54.
5. Local sub-contracting (within normal recruitment areas) may form part of the collaborative or partnership arrangements developed by institutions to meet the needs of young people in their areas.
6. In deciding whether to fund sub-contracted provision delivered at a distance from an institution's main site(s) **on an exceptional basis**, EFA will take into account a range of factors including, but not limited to:
  - whether the provision complies with the principles of study programmes as set out in *Funding Regulations*;
  - whether the whole or part of the programme is sub-contracted and the extent to which the parent institution is involved in delivery (for example teaching part of the programme or just providing financial and quality assurance);

- the location of delivery and the nature of travel to learn/travel to work patterns;
  - the extent of student contact with the parent institution;
  - the extent to which the provision being made is already available and accessible to students in the area where the sub-contractor is delivering;
  - the extent to which a gap in provision has been identified by the local authority or an employer.
7. This guidance is issued for the benefit of institutions who engage in sub-contracting, franchising and partnership arrangements to deliver EFA funded provision to ensure they put in place sufficient and reasonable control arrangements to assure the safety of any public funding transferred by them to other institutions (especially where funds are transferring from the public to the private sector). The EFA primary concern is that all sub-contracted delivery is properly monitored and controlled by all directly funded institutions who must not make artificial distinctions or distortions in describing delivery arrangements so as to avoid either:
- a. effective controls over third party delivery of provision, or
  - b. prior disclosure of these arrangements to the EFA where the delivery is significant and/or material to the institutions funding allocation.
8. Institutions are expected to be capable of determining for themselves where delivery arrangements make use of sub-contractors that require the application of this guidance. In any discussions in respect of sub-contracting arrangements with their funding body, institutions must declare the level of funding they are retaining as the EFA requires the majority of its funding to be used for the benefit of the student on their learning programme. The EFA requires the amount of funding retained by institutions to be proportionate to the costs they incur in the delivery of the provision and to take account of the actual costs incurred by their sub-contractors in delivering any programmes to students.
9. A standard form for recording information on sub-contractors is shown at Annex A and is also available on the EFA website as a separate Word document to simplify completion. Institutions whose sub-contracting accounts for more than 10% of their 16-19 programme funding should return a completed copy of this form electronically by email to their relevant EFA territory mail box.

## Direct delivery

10. Direct delivery arrangements are where institutions use their own staff in their own buildings. This includes buildings that form part of the institution's own infrastructure that may be rented or leased, usually on a long-term basis.

## Sub-contracted delivery

11. Sub-contracted delivery is characterised in the following ways.

- a. Provision delivered away from the main institution sites by staff belonging to organisations with whom the institution has entered into any contractual arrangements for which payments are then dependent on student numbers, volumes or formula funding values.
- b. Provision delivered at premises owned or controlled by a sub-contractor that also has contracts for the supply of educational materials and/or is involved in delivery of any learning.
- c. Any other previous sub-contracted and/or franchise arrangements.

## Guidance on provision delivered with a sub-contractor

### General advice on contracts for sub-contractor provision

12. Institutions must have a written contract governing their sub-contractor arrangements which clearly sets out the respective responsibilities of both the institution and the sub-contractor. This contract must entitle the institution to exercise the required control over the sub-contractor's activity, including access by auditors appointed by either the institution or the funding body. Each institution will wish to take its own legal advice before entering into contracts.

13. Where leadership and management is deemed inadequate by Ofsted or by the EFA following an institution's failure to meet minimum levels of performance, or any other quality threshold set out by the EFA, or an institution is in financial failure, recruitment restrictions may be applied. The institution may not enter into new, or extend existing, EFA-funded sub-contractor arrangements until the EFA is satisfied that the deficiencies have been remedied.

14. The contract must satisfy a control test with the following key elements:

- a. an institution being able to enrol or reject students as it would do if the students were to be taught on its own site,
- b. a learning agreement entered into at the time of enrolment that reflects the outcome of initial guidance and assessment for an individual student,
- c. a learning programme and its means of delivery that have been clearly specified by the institution,
- d. the institution being in control of the delivery of the learning,
- e. arrangements for assessing the progress of individual students, and
- f. procedures for the institution to regularly monitor the delivery of programmes provided in its name.

## Procurement

15. All institutions must ensure that they comply with relevant procurement regulations. Each institution must ensure that their sub-contractor(s) have been selected fairly and have sufficient capacity, capability, quality and business standing to deliver the provision that is being sub-contracted. All publicly funded bodies must ensure they comply with relevant UK and European regulations when procuring the services of a sub-contractor.
16. Institutions must take all necessary steps to verify any conflicts of interests in potential sub-contractors, and eliminate such sub-contractors from the process or disclose any such issues in consulting the EFA.
17. How institutions choose to meet these requirements and monitor them is a matter for them to determine. However, the EFA reserves the right to ask all institutions for additional evidence that support their decisions within this process.
18. Institutions remain responsible for checking the details provided by the successful sub-contractor and neither the EFA nor the Secretary of State will accept any liability in respect of the sub-contractor.
19. For Traineeships the following additional conditions must be met:
  - you can subcontract to existing subcontractors at 1 June 2013;
  - if you want to enter into a new subcontracting arrangement for traineeships then the sub-contractor must have achieved an Ofsted inspection grade of Outstanding (Grade 1) or Good (Grade 2);
  - institutions must not subcontract to an Ofsted graded inadequate provider or a provider under a Notice of Concern.
20. Where academies are funded on the basis of their estimates of student numbers (as specified in the Funding Agreement) provision delivered with a sub-contractor will not normally be acceptable if it takes student numbers above the number that would have been the basis of funding had the academy been funded on the basis of the census.

## Due diligence

21. Institutions are responsible for carrying out their own due diligence to manage the reputational and other risks of contracting with the proposed sub-contractor. This process must consider non-financial as well as financial issues. The governing body will wish to determine the nature and extent of these procedures but in financial terms they would normally be expected to include the steps set out below.

22. Contracts should only be awarded to registered companies or charities. The status of companies should be recorded as “active” on the Companies House register.
23. The financial health of the proposed sub-contractor must be assessed to ensure that they have the financial standing and capacity to deliver the contract. This will involve obtaining and reviewing their statutory accounts (financial statements), and possible reference to credit agency checks. Statutory accounts should be subject to an external audit (subject to the size of the company). Extreme caution must be exercised where a credit agency limit is low, or where the company has high levels of borrowing or poor indicators of financial solvency.
24. In addition contracts must not be awarded to companies with:
- a. risk warnings (i.e., above average risk warning from an agency),
  - b. legal notices (i.e., intention to dissolve, winding up petition/order, compulsory or voluntary liquidation, etc), or
  - c. overdue statutory accounts.
25. Contracts should not normally be awarded to brand new companies:
- a. who are yet to submit their first statutory accounts, or
  - b. who have a legal relationship with a company falling into categories listed above.
26. In an exception where an institution wishes to contract with a newly established company, it must obtain sufficient information to verify financial capacity, e.g. through a costed business plan.
27. In order to gather information about the proposed sub-contractor institutions may wish to refer to the Register of Training Organisations (TRoTO) maintained by the Skills Funding Agency. This would provide some assurance that an organisation included on TRoTO has successfully passed a due diligence process and has had their capability to deliver programmes assessed by another funding body.

## **Controls over students, tutors and provision**

28. Each student must have a learning agreement, signed by the student and the sub-contractor, which accords with the funding guidance on initial guidance and counselling and with the terms of the sub-contractor contract.
29. Sub-contractors must not sub-contract the delivery of EFA-funded provision to other organisations or self-employed individuals without the express and written approval of the institution’s funding body.
30. The delivery of provision must be by the sub-contractor’s directly employed staff. In the case of volunteers, the control must be ‘as if they were employed’.

31. It is not acceptable for any control activities to be undertaken by any institution staff with a financial interest in their sub-contractors. This includes the signing of time sheets or invoices as well as organising and/or performing any monitoring visits about the sub-contractor delivery.
32. The institution must be able to demonstrate complete control of the provision if it is to be considered eligible for funding. If the trainers normally sell their services as self-employed contractors, the sub-contractor must create an employment relationship with them.

## **Controls over qualifications and curriculum**

33. The institution should normally be the centre approved by the awarding body for the qualifications being offered by means of sub-contracted provision. Where this is not the case, the institution must inform its funding body in writing as to the reasons why it is not the approved centre. The institution must be able to demonstrate that it is monitoring the activities of the approved centre, in particular its relationship with the awarding body, and that it is exercising control over, and making appropriate arrangements for, the quality assurance of all provision.
34. Where the institution is making sub-contracted provision in curriculum areas not normally covered by the institution, it must be able to demonstrate that it can exercise effective control over the provision. In these circumstances the institution must employ an independent person with appropriate expertise in the curriculum area to provide advice on sub-contracted arrangements and undertake the necessary checks on the operation of the arrangements, including monitoring of the quality of provision. This person must not have a financial relationship with the sub-contracted firm or organisation.

## **Other EFA-funded students**

35. Institutions are reminded that once students are enrolled by an institution they must not be transferred for funding purposes to other funded institutions. Institutions must ensure that before any EFA funding is claimed for any sub-contracted students no 'double funding' is being claimed for them.
36. Full time provision made entirely on academy or school premises by academy or school staff is not eligible for funding by any institution apart from the academy or school itself.

## **Monitoring (control) visits and spot checks**

37. Institutions must address these issues for themselves, and the following paragraphs give some advice on the content of the controls expected from EFA-funded institutions on their sub-contracted delivery arrangements.



38. Spot-check visits must be carried out regularly in cases where the provision runs throughout the year. In other cases, the scheduled spot-check visits must take account of the pattern of provision so that they are applied to a significant proportion of students. Systematic spot-check visits must involve the institution making unannounced visits in-year to each sub-contractor. A sample of sites must be included for provision being delivered by each sub-contractor, rather than simply revisiting the same site. The checks must be proportionate to the risk and volume of the provision and contract. They must also be undertaken during the year at times that are proportionate to the periods in which funding is being claimed.
39. Institutions must ensure that they meet and interview a sample of students and, where appropriate, staff. Students must be asked to name the institution they are enrolled at, and must also be asked if they are at the same time, or have been recently, a student at another EFA-funded institution. Other evidence sought should include marketing material, copies of registers, learning agreements, registration documents for awarding bodies, visit notes from external moderators and evidence of certification.
40. Systematic checks must be used to confirm that the provision exists and is consistent with the institution's expectations and records. The number and characteristics of students must accord with the institution's expectations and records. For example, any obvious mismatch between the apparent and expected age of the students must be investigated.
41. Monitoring of provision must include checks on eligibility of provision and direct observation of the initial guidance and assessment process and at appropriate intervals, of the delivery of the learning programmes. Monitoring activities must be similar to those considered appropriate for external verification or moderation, sufficient to ensure that student progress can be monitored, and used to gather regular student feedback.

### **Sub-contractors with multiple institution contracts**

42. A sub-contractor must report on a regular basis to each institution whether it has entered into contracts with other institutions, and commit to confirming the volume and value of those contracts. Institutions must be proactive in ensuring that they receive such reports. The institutions must liaise to determine which of them holds the largest contract with the sub-contractor, where size is defined by the total amount of cash delivered with the sub-contractor. For these purposes, institutions must treat all companies or organisations that are in the same common ownership or control as one sub-contractor, and must look carefully at any arrangements where a number of companies or organisations seem to share a similar ownership or control.

43. The institution with the largest contract shall be regarded by the EFA as having lead responsibility for the provision. In the event that all contracts made by one sub-contractor (or by a group of related sub-contractor organisations) are of a similar size in terms of the amount of cash, it is expected that the institution with the most long-standing relationship with the sub-contractor shall take lead responsibility.

## **Funding implications: all aspects of sub-contracted provision**

44. For non-existent or ineligible funding activity either recorded or claimed by institutions, the EFA will seek recovery of funds paid for the ineligible activity or students, including funding not usually subject to any reconciliation arrangements.

## **Advice for heads of directly funded institutions (Accounting Officers) on all aspects of sub-contracted provision**

45. The EFA guidance on the checks expected by EFA-appointed programme and funding auditors over sub-contracted delivery arrangements is made available to the heads and chief executives of institutions (Accounting Officers). This advice also applies to the lead institution for sub-contractors.

46. Institution management (including where operating as the lead institution) are required to satisfy themselves of the following.

- a. That all sub-contracted delivery arrangements comply with the evidential requirements set out in companion document Funding regulations: Section 6: Evidence of student existence and eligibility.
- b. That the controls set out in this document are in place and operating for all sub-contractor arrangements.
- c. That institution management are making appropriate systematic checks to ensure that students enrolled by sub-contractors on their behalf and recorded in their records are correctly described in their own student record system and were actually receiving the scheduled provision described.
- d. That the detailed guidance in paragraphs 14 and 38 has been appropriately carried out and for lead institutions ensure there is no risk of double funding for sub-contractors with multiple sub-contracts.

## Annex A: Sub-contractor details – 201 – to 1 - Year

Date: --/--/----

Name of funded institution:	
Data Service unique provider information number (UKPRN) code	
Sub-contractor UKPRN	
Trading name of sub-contractor This must include any other related business trading names involved in any Agency-funded provision.	
Trading address of sub-contractor (Only needed if no UKPRN entered above)	
Delivery location postcode(s) of sub-contractor provision	
Value and length of annual contract Record total £ of EFA funding expected to be claimed for the provision.	
Record expected start and end date of contract in the format mm/yyyy.	
Value of annual contract in learner numbers Record either full-time (FT) and part-time (PT) learner numbers or learner numbers and expected funded values – state which.	
Amount (as a %) of EFA funding passed to sub-contractor for the delivery of the provision	
Summary of services given for the funding retained (the top slicing % not shown in the above box) by the directly funded institution:	
Details of any out of normal recruitment area delivery (high eligibility risk):	
Any additional information or concerns the institution wishes to share with the funding body:	

\* The amount of information held on this form should be proportionate to the value of the sub-contract.



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