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Guidance

# Subcontracting post-16 education and training for the first time

Updated 6 September 2023

## Applies to England

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As a lead provider of post-16 education and training who has not previously subcontracted provision we fund, you must get:

- approval in writing before awarding a contract to a subcontractor
- a report from an external auditor, as part of your request for approval

This is required under the Department for Education (DfE)'s [subcontracting funding rules](#).

This guide outlines the process and the information you need to provide.

# What subcontracting is

You are subcontracting if you make an agreement with a separate legal entity or an individual, who is not an employee, to deliver any element of the education and training we fund.

A separate legal entity includes but is not limited to companies in your group, other associated companies and sole traders.

An individual could include a person who is:

- a sole trader
- self-employed
- a freelancer
- someone employed by an agency

This applies unless those individuals are working under your direct management and control, in the same way as your own employees.

It does not matter if the subcontractor is recruited to teach on site or to provide online learning. It also does not matter whether their work is described as a service.

## Providers who must get approval

Lead providers must get approval if they are subcontracting out provision for the first time for:

- the adult education budget
- 16 to 19 provision

DfE rules apply to adult education budget provision in non-devolved areas. In areas where the adult education budget has been devolved, mayoral combined authorities or the Greater London Authority are responsible for the rules which apply in their areas.

If you have approval to subcontract provision we fund and have evidence of this approval, you do not need to seek approval in subsequent years.

Approval is not funding stream specific. For example, you do not need to seek new approval if you have approval to subcontract provision based on you subcontracting adult education budget provision and you will be subcontracting 16 to 19 provision.

## How to make a request

You must seek our written approval to subcontract for the first time before entering into a subcontracting arrangement. You must write to us at least 12 weeks before any learner's planned start date.

You must submit the request in writing, on your organisation's letterhead. In your request, we need you to supply the following information about your proposed subcontracting arrangement:

- why you are seeking to subcontract for the first time
- what you are seeking to subcontract
- the full legal name and UK provider reference number (UKPRN) of the

subcontractors that you will use, if you have already selected them

- the proposed financial value of the subcontracting arrangements, if known
- confirmation that all relevant funding rules have been considered and met
- your subcontracting policy, including your fees and charges policy - this should be included as an annex to the request

## Your accompanying report

The accompanying report provides assurance on the systems and controls you have in place for subcontracting. This must:

- be written by an external auditor
- confirm that you have effective processes and controls in place for carrying out the effective management of subcontractors
- reflect the lead provider's overall subcontracting process, the subcontracting requirements set out in their funding agreements and the associated funding rules for the respective year

When complete, email your request to [Enquiries.ESFA@education.gov.uk](mailto:Enquiries.ESFA@education.gov.uk).

## Your external auditor

You must select and engage an external auditor to write your accompanying report.

The external auditor must be:

- a professionally qualified person from an organisation external to the provider, that can provide an independent report on their subcontracting systems and controls
- able to sign the certificate provided

The person should be registered with an appropriate professional body.

The external auditor cannot be an employee, director, trustee, shareholder or any other similar party with a vested interest in the provider. This is true irrespective of whether their normal role is to carry out their audit work.

The external auditor:

- does not have to be a provider's existing external auditor
- will not be liable to us for the work it has undertaken for the lead provider

We are not prescribing the process that the auditor must follow. It is the lead provider's role to agree this with their auditor.

## Reviewing and signing the report

Once the report has been completed, the lead provider's accounting officer or senior responsible person must review it. Examples of the senior responsible person are chief executive, managing director, principal or their equivalent.

The certificate must be signed by:

- the lead provider's accounting officer or senior responsible person
- the auditor

We will not accept transmittal letters or other forms of letter as a replacement for the certificate.

## Implementation plan

If the external auditor has indicated that an implementation plan is required following their audit, you must also send this. We will review it as part of our compliance arrangements.

## How DfE will respond to your request

DfE will consider your request, taking into account data and information available both internally and externally. Examples of these are:

- [Companies House](#) and [Charity Commission](#) databases, to check that the proposed subcontractors are bona fide legal entities
- the [UK register of learning providers website](#), to check the supplied UKPRNs

- the [list of declared subcontractors](#), to determine if your proposed subcontractors hold contracts worth at least £100,000 in aggregate with one or more lead providers of adult education and training services, including apprenticeships and traineeships

We will consider:

- your subcontracting policy, including your fees and charges policy
- the external auditor's report on the effectiveness of the processes and controls you have in place for managing subcontractors

Under normal circumstances, we will respond to your request within 15 working days of receipt.

We reserve the right to decline your request. If we decline it, we will explain why. If we decline your request, you must not enter a subcontracting arrangement for the delivery of provision we fund.

Use [the Education and Skills Funding Agency's enquiry service](#) to send any queries.

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