



TEES VALLEY
COMBINED
AUTHORITY

TEES VALLEY MAYOR

TEES VALLEY COMBINED AUTHORITY

Adult Education Budget

SUBCONTRACTING POLICY 2019/2020

NOVEMBER 2018

Table of Contents

Aim and purpose of this document	3
Provision outside the scope of this document	4
Direct delivery definition	4
Declaring subcontracting provision	5
Why TVCA require additional controls and procedures in respect of subcontracted provision	5
TVCA intervention.....	5
TVCA penalties for failure to comply with funding guidance for adult learners	6
Ineligible provision within Tees Valley Combined Authority adult education funding	6
Management, monitoring and control within Adult Learning provision.....	6
Advice for accounting officers of directly funded institutions on managing subcontracted provision within TVCA Adult Learning provision	7
Appointing and approving subcontractors	7
Subcontracting Fees and Charges.....	8
Level and percentage of subcontracting.....	8
Prevent duty.....	8
Controls and procedures for all subcontracting within Adult learning	9
Procurement.....	9
Application Process:.....	10
Decision Making Process.....	11
Due diligence.....	11
Contracts for subcontracted delivery for Adult Learning	12
Controls over learners, tutors and provision within Adult Learning	13
Controls over qualifications and curriculum within adult learning provision	14
TVCA directly funded adult learners attending more than one institution.....	14
Monitoring (control) visits and spot-checks within adult learning provision	14
Reporting outcomes of all monitoring activities.....	15
Providing external assurance on subcontracting controls.....	16
Process	16
Subcontractors with multiple institution contracts within adult learning provision.....	17
Transferring provision from institution	18

Aim and purpose of this document

1. The purpose of this policy is to ensure high quality subcontracting provision is delivered by all Tees Valley Combined Authority (TVCA) directly funded institutions and to ensure all subcontracted provision specifically meets the needs of Tees Valley learners and employers.
2. This document sets out the TVCA compliance and control regulations for all directly funded institutions that use third parties to deliver adult education that is funded by TVCA. Directly funded institutions includes all institutions that are directly funded by TVCA and this covers all Sixth Form and FE colleges, all Local Authorities and Independent Training Providers (ITPs). Institutions with no third party delivery arrangements will not need to refer to this document.
3. TVCA considers the term 'subcontracting' to encompass all third party arrangements you have with other providers where the provider is managing and delivering a proportion of your TVCA AEB funding award.
4. TVCA define a delivery subcontractor as a separate legal entity that has an agreement with you to deliver any qualifications that we fund for Tees Valley residents. A separate legal entity includes any training provider with a UKPRN including those in your group and other associated companies.
5. The term 'subcontractor' will also apply to any partnership, associate, third party working relationships you have where your staff and/or provision is managed by another partner/institution. TVCA will consider all the above as a subcontracting arrangement and as such will require all relevant detail on your 2019/20 Delivery Plan for appraisal by TVCA. These arrangements must also be identified in the ILR using the Partner UKPRN Field. This type of partnership working will be reviewed at the relevant Provider Performance Meetings in terms of outcomes for learners and provider quality assurance activities.
6. In addition, all TVCA directly funded institutions must ensure that their subcontractors comply with the eligibility and other requirements set out in the TVCA 2019/20 Funding Rates and Formula Policy and 2019/20 Funding and Performance Rules. All TVCA directly funded institutions are fully responsible for all aspects of the provision delivered under subcontracting, third party arrangements, including all aspects of learner and programme eligibility, performance and the safeguarding of adults.

Provision outside the scope of this document

7. These regulations do not apply where TVCA directly funded institutions agree to collaborate with each other in their individual local delivery arrangements to Tees Valley adult learners. Collaborative arrangements are those where two (or more) institutions directly funded by TVCA agree to share part of the delivery of education and training to Tees Valley adults, where the majority of each adult's education and training is delivered by the adult's home institution and where the home institution records the adult on the ILR.

Direct delivery definition

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

Subcontracted delivery definition

9. TVCA considers the term 'subcontracting' to encompass all third party arrangements you have with other providers where the provider is managing and delivering a proportion of your TVCA AEB funding award.
10. TVCA defines a delivery subcontractor as a separate legal entity that has an agreement with you to deliver any provision that we fund for Tees Valley residents. A separate legal entity includes any training provider with a UKPRN including those in your group and other associated companies.
11. The term 'subcontractor' will also apply to any partnership, associate, third party working relationships you have where your staff and/or provision is managed by another partner/institution. TVCA will consider all the above as a subcontracting arrangement and as such will require all relevant detail on your 2019/20 Delivery Plan for appraisal by TVCA. These arrangements must also be identified in the ILR using the Partner UKPRN Field. This type of partnership working will be reviewed at the relevant Provider Performance Meetings in terms of outcomes for learners and provider quality assurance activities.
12. The amount of TVCA adult education funding retained by the directly funded institution must be proportionate to the costs they incur in the management and administration of the subcontractor and must be determined through due diligence and risk assessment processes. Management fees must be kept to a minimum and be an accurate reflection of the support activities provided by the directly funded institution.

Declaring subcontracting provision

13. All institutions receiving TVCA adult education funding must record subcontracted provision in line with the published Education and Skills Funding Agency (ESFA) guidance for completion of the ILR (Individualised Learner Record). The Provider Delivery Plan must detail all intended subcontracting activity and this must be approved by TVCA prior to the commencement of any subcontracting delivery. Any changes to subcontracting arrangements during the funding agreement period, including potential increases in subcontracting delivery must be approved and agreed with TVCA prior to any subcontracting activity outside of the agreed Delivery Plan.
14. TVCA will publish annually a summary of provider subcontracting activity and information including the names of subcontractors and the number of adult learners on subcontracted provision.

Why TVCA require additional controls and procedures in respect of subcontracted provision

15. Some subcontracting arrangements have created substantial financial and reputation issues for institutions in the past, particularly where the subcontracted delivery has taken place at a distance from the directly funded institution. One particular concern is how the funding body has assured the proper use of public money, when funding is being transferred by publicly funded institutions to the independent sector. Directly funded institutions must properly monitor and control all subcontracted delivery of adult learning provision. Institutions must not make artificial distinctions or distortions when describing delivery arrangements in order to avoid the application of these regulations.

TVCA intervention

16. When TVCA has concerns about a subcontracting arrangement between an institution directly funded by the TVCA and a third party, we will carry out an assessment to determine if the arrangements comply with the detail, spirit and intention of this guidance. The assessment will take into account:

- the overall quality of the education and/or training being delivered under the subcontracting arrangement
- the funding eligibility
- the quality of outcomes for learners
- the management and control of the contract the welfare of the adult learners involved

TVCA penalties for failure to comply with funding guidance for adult learners

17. TVCA reserves the right to take a range of actions (in accordance with the TVCA Provider Funding Agreement) where institutions are not compliant with the guidance set out in this document, relating either to ineligible provision or failures in management and control of the sub contracted provision.

Ineligible provision within Tees Valley Combined Authority adult education funding

18. For non-existent or ineligible subcontracted activity either recorded or claimed by directly funded institutions, either TVCA will seek to recover any funds paid for the ineligible activity or adult learners in full or alternatively TVCA reserves the right to cease all future payments to the provider.

19. Where TVCA seeks to recover funds paid this is usually through adjusting future profile payments, but in the case of serious error or irregularity, TVCA reserves the right to insist on recovery of funding in-year and TVCA will cease all future payments. In future funding years, if it is reported to TVCA that an institution has recorded ineligible activity in funding returns, TVCA will potentially recover funding in-year and for the previous year(s) and up to 6 previous funding years, in accordance with normal public sector accounting rules for the protection of public funds.

Management, monitoring and control within Adult Learning provision

20. When directly funded institutions do not appropriately manage and monitor subcontracted delivery, TVCA may remove Tees Valley adult learner numbers and the associated funding allocation generated from their agreed Provider Delivery Plan, even if there are no concerns over the subcontracted provision's quality. TVCA may also require the institution to discontinue the subcontracting arrangement either with immediate effect or from the end of the current funding year.

21. The Department for Education (DfE) and/or TVCA will apply its intervention policy, and TVCA may apply recruitment restrictions when an institution has failed. TVCA will also consider subcontracted provision under the control of a failed institution to be inadequate. Failed institutions must not enter into any new, or extend existing, TVCA funded subcontractor arrangements. As detailed in the 2019/20 TVCA Performance Management Framework, any increase in subcontracting delivery must be approved by TVCA. The TVCA funding agreement sets out the action that may follow intervention. An institution fails when:

- Ofsted assess it as overall inadequate
- it does not meet ESFA AEB national minimum standards for adult provision
- the ESFA assess it as in financial failure and issue a financial notice to improve
- The ESFA issue a notice to improve due to quality concerns

22. When subcontracted provision does not meet the required standards as detailed in the TVCA 2019/20 Performance Management Framework and TVCA 2019/20 Funding and Performance Rules, TVCA may take one or both of the following actions:

- remove the adult learner numbers and associated subcontracting funding value from the funding allocation for the directly funded institution
- require the institution to discontinue the subcontracting arrangement, either with immediate effect or from the end of the current funding year

Advice for accounting officers of directly funded institutions on managing subcontracted provision within TVCA Adult Learning provision

23. Heads, Principals, Managing Directors and Chief Executives of directly funded institutions need to ensure full compliance with this guidance regardless of any TVCA or ESFA auditing activity for AEB. This advice also applies to the lead institution where subcontractors have multiple contracts for the delivery of TVCA funded provision.

24. The directly funded institution's management are required to satisfy themselves that:

- all subcontracted delivery arrangements comply with the evidential requirements set out in the TVCA Provider Funding Agreement
- the controls set out in this document are in place and operating effectively for all subcontractor arrangements
- they are making appropriate systematic checks to ensure that Tees Valley adult learners enrolled by subcontractors on their behalf and recorded in their records are correctly described in their own adult learner record system (ILR) and are actually receiving the scheduled provision described

Appointing and approving subcontractors

25. When appointing subcontractors, institutions' management must take steps to avoid any conflicts of interest and/or any circumstances (for example, common directorships) which might give rise to an actual or perceived conflict of interest.

26. Institutions' management must satisfy themselves that the detailed guidance in this document from section 16 has been appropriately carried out. Directly funded institutions must ensure that there is no risk of double funding for subcontractors with multiple subcontracts with directly funded institutions.

Subcontracting Fees and Charges

27. TVCA recognises that there is a need for TVCA directly funded institutions to charge a management fee for managing a subcontracting agreement and the operation activities related to ensuring high quality provision and positive outcomes for adult learners. However, it is also recognised that the management fee should be realistic and an accurate reflection of the management costs incurred by the funded institution. A provider's management fees will be detailed and reviewed as part of the TVCA Provider AEB Delivery Plan review. The provider is accountable for ensuring the management fee applied is a realistic and accurate fee for the management activities undertaken to support the subcontractor and ensure high quality outcomes for Tees Valley learners.

Level and percentage of subcontracting

28. All subcontracting activity must be effectively planned on an annual basis and detailed within the Provider AEB Delivery Plan for review by TVCA prior to any potential funding agreement and award of AEB funding allocation. Details will include all subcontracted types of provision, learner numbers and funding values. In addition, the provider's intended management fee will be detailed for review by TVCA for each subcontractor detailed within the directly funded institutions' Delivery Plan. Any additional subcontracted delivery in-year above the level and scope detailed within the TVCA agreed Provider Delivery Plan must be approved and agreed by TVCA prior to any additional subcontracting agreement or activity.

29. All providers must publish their specific Subcontracting Fees & Charges Policy for each academic year on their organisational website.

Prevent duty

30. The prevent duty, which requires that institutions, when exercising their functions, have due regard to the need to prevent people from being drawn into terrorism, extends to any subcontracted provision. It is a condition of funding that all further education and independent training providers must comply with relevant legislation and any statutory responsibilities associated with the delivery of education and safeguarding of learners, and this includes learners receiving provision under a subcontracting arrangement.

Controls and procedures for all subcontracting within Adult learning

Procurement

31. All institutions must ensure that they openly comply with current and relevant procurement regulations. Each institution must ensure that they select their subcontractor(s) fairly and that they have sufficient capacity, capability, quality and business standing to deliver the provision that is being subcontracted. All publicly funded bodies must ensure they comply with relevant UK and European regulations when procuring the services of a subcontractor.
32. An institution must not subcontract, without written TVCA permission, with any provider in the following categories. The contract between the directly funded institution and the subcontractor should allow immediate or early termination if these circumstances arise during the contract:
- a subcontractor that is inspected in its own right and found to be inadequate
 - a subcontractor that is subject to intervention by the ESFA or FE Commissioner due to financial or quality concerns
 - instigation of ESFA Insolvency Regime
 - ESFA Poor financial health reporting
33. Institutions must take all necessary steps to verify any actual or perceived conflicts of interests in potential subcontractors, and eliminate such subcontractors from the process. How institutions choose to meet these procurement requirements and monitor them is a matter for them to determine. However, TVCA reserves the right to ask all institutions for additional evidence that support their decisions within this process to resolve any eligibility issues.
34. Institutions remain responsible for checking the details provided by the successful subcontractor and neither TVCA nor the Secretary of State will accept any liability in respect of the directly funded institution procurement of any subcontractor.
35. TVCA Funding and Performance Rules for 2019/20 confirm that if a provider has not previously subcontracted provision and intends on subcontracting TVCA AEB in 2019/20, they must get approval in writing from TVCA before awarding a contract to a subcontractor. The evidence requirements specified within the TVCA Funding and Performance Rules for 2019/20 state that the request to subcontract must be accompanied by a report from an external auditor.

Application Process:

36. You must seek TVCA written approval to subcontract for the first time before entering into a subcontracting arrangement.

37. 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
- The elements of delivery you are seeking to subcontract
- The full legal name and UKPRN of the subcontractor(s) that you will use (if you have already selected the subcontractor(s) that you intend to use)
- The proposed financial value of the subcontracting arrangement(s)
- Confirmation that all relevant Funding Rules have been considered and met
- Your subcontracting fees and charges policy should be included as an annex to the request

38. The accompanying report must be written by an external auditor and must confirm that you have effective processes and controls in place for carrying out the effective management of subcontractors. The report must reflect the end-to-end subcontracting process and good practice specified in Supply Chain Management – a good practice guide for the post-16 skills sector.

39. Your report should also include the following detail:

- Developing the business case
- Establishing the selection process
- Assessing the capacity and capability
- Managing performance
- Contracting fees

- Risk assessment

40. When complete, you should email your request to your Provider Relationship and Performance Officer at TVCA. **All requests must be submitted to TVCA following your indicative TVCA AEB 2019/20 Allocation in April 2019 and prior to 29 June 2019. This will allow TVCA sufficient time to review and approve your application prior to the commencement of your funding agreement.**

Decision Making Process

41. We will consider your request, taking into account data and information available within and outside the Tees Valley, including any national data and information from the ESFA. Examples of these include, but are not restricted to:

- Companies House and Charity Commission databases to check that the proposed subcontractor(s) is/are a bona fide legal entity
- the UKRLP website to check the supplied UKPRN(s)
- the ESFA Subcontracting Register to determine the current commitments of the proposed subcontractor(s) and establish if they are contracted to deliver at least £100,000 each year, in which case they also need to be listed on the Register of Training Organisations
- We will consider your subcontracting fees and charges policy
- We will consider the external auditor's report on the effectiveness of the processes and controls you have in place for managing subcontractors

42. TVCA will, under normal circumstances, respond to your request within 14 days of receipt.

43. TVCA reserves the right to decline your request. If TVCA do decline it, TVCA will explain why they are declining it. If TVCA decline your request, you must not enter into a subcontracting arrangement for the delivery of your TVCA AEB allocation during your Funding Agreement period.

Due diligence

44. Institutions are responsible for carrying out their own due diligence to manage the reputational and other risks of contracting with the proposed subcontractor. This process must consider

non-financial as well as financial issues. The governing bodies of colleges and senior executives of all authority or independent training providers must determine the nature and extent of these procedures, but in financial terms, they will be expected to include the steps set out below:

- Institutions must only award contracts to registered companies or charities. The status of companies should be recorded as 'active' on the Companies House register
- Institutions must assess the financial health of the proposed subcontractor on at least an annual basis to ensure that they have the financial standing and capacity to deliver the subcontract. This will involve obtaining and reviewing their statutory accounts (financial statements), and possible reference to credit agency checks
- Institutions must exercise extreme caution where a credit agency limit is low, or where the company has high levels of borrowing or poor indicators of financial solvency

45. In addition, contracts must not be awarded to companies with any of the following:

- risk warnings (that is, above average risk warning from an agency)
- legal notices (that is, intention to dissolve, winding up petition/order, compulsory or voluntary liquidation, etc.)
- overdue statutory accounts

46. Institutions must not award contracts to brand new companies who:

- are yet to submit their first statutory accounts, or
- have a legal relationship with a company falling into categories listed above

47. In an exception where an institution wishes to contract with a newly established company, it will obtain sufficient information to verify financial capacity, for example through a costed business plan.

48. In order to gather information about the proposed subcontractor, institutions may wish to refer to the ESFA's Register of Training Organisations. This would provide some assurance that an organisation included on the register has successfully passed a due diligence process and has had their capability to deliver programmes assessed by another funding body.

Contracts for subcontracted delivery for Adult Learning

49. As part of showing compliance with this guidance, institutions must have a written contract governing their subcontractor arrangements that clearly sets out the respective responsibilities of both the institution and the subcontractor. This contract must entitle the institution to exercise the management controls over the subcontractor's activity, including access by auditors appointed by either the institution or TVCA. Each institution will wish to take its own legal advice before entering into contracts.

Controls over learners, tutors and provision within Adult Learning

50. Additional controls in respect of subcontracted provision are required for a number of reasons:

- to ensure that the quality of the education provision delivered through a subcontracting relationship is actively managed and monitored by the directly funded institution to the same standards as directly delivered provision
- to ensure that the risks to public funding are actively managed by the directly-funded institution
- to protect the reputation of the sector, individual institutions and TVCA

51. The management and control exercised by the directly funded institution must be able to demonstrate the following key elements are in place:

- an institution being able to enrol or reject learners as it would do if the learners were to be taught on its own site
- a learning agreement, signed by the learner, entered into at the time of enrolment that reflects the outcome of initial guidance and assessment (IAG) for an individual learner and sets out adult learning programme
- that the learner eligibility for TVCA funding is confirmed through their individually signed enrolment form and/or learning agreement which must include the name and logo of the directly funded institution
- a learning programme and its means of delivery that have been clearly specified by the institution
- arrangements for assessing the progress and satisfaction of individual learners, and
- procedures for the institution to regularly monitor the delivery of programmes provided in its name

52. Subcontractors must not subcontract any part of the delivery of TVCA AEB funded provision to other organisations or self-employed individuals. TVCA do not allow multiple level subcontracting in any funded delivery for adult learning provision. For example, if the trainers used normally provide their services as self-employed contractors, the subcontractor must create an employment relationship with them. The delivery of provision should be by the subcontractor's directly employed staff. In the case of volunteers, the control will be 'as if they were employed.'

53. It is not acceptable for subcontractors or institution staff with a financial interest in the subcontractor to undertake any management control activities. This includes signing time sheets or invoices as well as organising and/or performing any monitoring activity or visits about the subcontractor delivery.

Controls over qualifications and curriculum within adult learning provision

54. The directly funded institution should normally be the centre approved by the awarding body for the qualifications being offered by means of subcontracted provision. The institution should 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.
55. Where the institution is making subcontracted 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 should employ an independent person with appropriate expertise in the curriculum area to provide advice on subcontracted 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 subcontracted firm or organisation.

TVCA directly funded adult learners attending more than one institution

56. The learner's home institution must draw down all the funding for a TVCA funded learner. A learner cannot enrol at more than one directly funded TVCA institution for different components of their programme. Where a learner is attending different institutions for different components of their programme, the home institution must record all these components, and indicate on the individualised learner record (ILR) which elements are delivered via a subcontracting arrangement (see sections 4 and 5). All institutions, whether funded directly or through subcontracting arrangements, should ensure that before any TVCA funding is claimed for any subcontracted learners no 'double funding' is being claimed for them. They should be assured that the subcontracted learners are not enrolled, and being directly funded by TVCA or any other AEB funding, i.e. ESFA or another combined authority, via another institution. All individual learners recorded for funding purposes must have the correct unique learner number recorded.

Monitoring (control) visits and spot-checks within adult learning provision

57. Institutions must address all the monitoring, management and control issues over their subcontracted delivery set out in this document for themselves. The section gives some advice on the management controls and monitoring required from TVCA directly funded institutions on their subcontracted delivery arrangements.
58. Spot check visits should be carried out regularly in cases where the provision runs throughout the year. In other cases, the scheduled spot-check visits should take account of the pattern of provision so that they are applied to a significant proportion of learners on a regular basis.

59. Systematic spot check visits should involve the institution making unannounced visits in-year to each subcontractor. A sample of sites must be included for provision being delivered by each subcontractor, rather than simply revisiting the same site.
60. The checks should be proportionate to the risk and volume of the provision and contract. They should also be undertaken during the year at times that are proportionate to the periods in which funding is being claimed. Institutions should ensure that they meet and interview a sample of students and staff. Institutions must ask learners to name the institution they are enrolled at, and must also ask if they are at the same time, or have been recently, a learner at another TVCA directly funded institution.
61. Other evidence sought should include:
- marketing material
 - copies of registers
 - learning agreements
 - registration documents for awarding bodies
 - visit notes from external moderators
 - evidence of certification
62. Institutions must use systematic checks to confirm that the provision exists and is consistent with their expectations and records. The number and characteristics of learners should accord with the institution's expectations and records.
63. The TVCA directly funded institution must carry out an investigation at their own cost if there is any evidence of a subcontractor's irregular financial or delivery activity and report the outcome of the investigation, in writing, to TVCA within 10 days of the investigation ending.
64. 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, which may include reviewing examples of learner work. Monitoring activities should be similar to those considered appropriate for external verification or moderation, sufficient to ensure that learner progress can be monitored, and used to gather regular student feedback.

Reporting outcomes of all monitoring activities

65. All outcomes from directly funded institutions spot checks and auditing activities of their subcontractors must be shared with the relevant TVCA provider Relationship and Performance Officer within six weeks of the completed monitoring activity. The outcomes of all subcontracting provision will be discussed and reviewed at the Provider Performance

Review Meetings with TVCA on a quarterly basis. In addition, the TVCA Annual Review with the provider will also assess the outcomes and impact of the subcontracted provision.

Providing external assurance on subcontracting controls

66. The clause within the TVCA Funding Agreement requires lead providers that will subcontract more than a defined level of provision to obtain a report from an external auditor that provides assurances on the arrangements in place to manage and control subcontractors. The clause requires lead providers in scope to supply us with a certificate confirming that the report provides satisfactory assurance. Lead providers will be in scope if they enter into subcontracts with an aggregate value of £100,000 or more in any one contract year for the delivery of TVCA AEB to Tees Valley residents. (This Certificate is provided in Annex A of this document.)
67. In relation to this clause, an external auditor is a professionally qualified person from an organisation external to you that is able to provide an independent report on systems and controls and is registered with an appropriate professional body.
68. For the sake of clarity, the external auditor cannot be a Director, Trustee, shareholder, employee or any other similar party with a vested interest in your organisation, irrespective of whether their normal role is to carry out audit work for you. The external auditor does not necessarily have to be your existing external auditor.

Process

69. You must select and engage an external auditor that fulfils the definition above. The external auditor must be able to sign the certificate provided in Annex A.
70. You must obtain a report from your chosen external auditor that provides assurance on the systems and controls you have in place in 2019 to 2020 for managing subcontracted delivery.
71. The report must reflect the end-to-end subcontracting process and subcontracting requirements set out in your TVCA Provider Funding Agreement and the TVCA Funding Rules for 2019/20. It must cover the following as a minimum:
- General requirements – Subcontracting (Clause 73 to 78)
 - Selection and procurement (Clause 79 to 84)
 - Entering into a subcontract (Clause 85 to 92)
 - Contract requirements (Clause 93 to 94)
 - Monitoring of subcontracting (Clause 95 to 98)
 - Second level subcontracting (Clause 99)
 - Reporting on subcontracting (Clause 100 to 101)

- Fees and charges (Clause 102)

72. TVCA are not prescribing the process that the auditor must follow in undertaking the assignment. It is your role to agree this with the auditor.
73. Once the report has been completed, your accounting officer or senior responsible person must review it. Examples of the senior responsible person are: Chief Executive, Managing Director, Principal or their equivalent.
74. Your accounting officer or senior responsible person must then complete a certificate. The certificate must also be signed by the auditor. A template of the certificate can be found at Annex A of this policy.
75. Transmittal letters or other forms of letter will not be accepted as a replacement for the certificate.
76. When your certificate has been completed, you must send it via email address for the attention of your Provider Relationship and Performance Officer. You must do this by 31 May 2019. Failure to submit your External Assurance Certificate (Annex A) will delay the distribution of your 2019/20 Provider Funding Agreement.
77. You do not need to send a copy of the report to TVCA, but we reserve the right to request a copy from you at any point during the funding agreement period to review as part of our quality compliance arrangements.
78. If the external auditor has indicated that an implementation plan is required following their audit, we reserve the right to request a copy of it from you for us to review as part of our quality compliance arrangements.
79. For the avoidance of doubt, the external auditor will not be liable to us for the work it has undertaken for you.

Subcontractors with multiple institution contracts within adult learning provision

80. Directly funded institutions must establish which of their subcontractors work with other directly funded TVCA institutions. Subcontracted provision has had the highest number of historic double funding problems and TVCA regards such arrangements as high risk. TVCA expects any institution with subcontracted provision to use the advice below to reduce their risk in recording ineligible provision. If double funding occurs, then TVCA will treat the delivery as ineligible for funding and recovery of funds will take place.
81. TVCA regards the best practice for this control activity to be that a subcontractor should report on a regular basis to each TVCA directly funded institution with which it has a subcontract. The report must confirm the volume and value of all contracts, and to confirm that each individual student only has funding claimed by one institution. Institutions will find that accurate recording, use and exchange of unique learner numbers (ULNs) simplifies this work.

Transferring provision from institution

82. When a directly funded institution ceases a subcontracting arrangement and the subcontractor transfers the provision to a different prime contractor, TVCA may remove one or both institutions from the allocation process to ensure that the funding follows the learner.
83. When an institution stops a subcontracting arrangement, they must make sure there is continuity of provision for those learners already on the programme and that there is no gap in provision created as a result. We remind institutions that learners on subcontracted provision are their responsibility. They are responsible for ensuring that existing learners are funded to the end of their programme either by a phased withdrawal from the relationship or by transferring funded numbers to another institution that has agreed to pick up the continuing students.
84. If an institution plans to stop a subcontracting arrangement, we expect them to give the subcontractor sufficient notice. This must be at least 3 months, but may need to be longer. The prime institution must work with the subcontractor to put plans in place to ensure that students who are part way through their learning programme are supported to complete.
85. When a subcontracting arrangement stops, TVCA will reserve the right to adjust the provider's allocation to remove the subcontracted numbers and related funding value. The decision on whether to make an adjustment to numbers and funding payments will depend on the scale of the subcontracted provision, the timing and process followed in ceasing the contract, and the nature of any resulting gap. However, TVCA reserves the right to re-profile in-year future payments to the provider to reflect the reduced subcontracting activity and learner numbers.
86. If we adjust the allocation for the former directly funded institution, the funding for continuing learners would usually transfer to the new prime institution. We would then consider an evidence-based business case from the new prime to fund any planned new starts.
87. When a directly funded institution ceases a subcontracting arrangement and the subcontractor transfers the provision to a different prime contractor, the directly funded institution must inform TVCA immediately. The directly funded institution must inform and liaise with their TVCA Relationship and Performance Officer to discuss and review their plans to ensure the continuity of provision for Tees Valley learners. The TVCA Relationship and Performance Officer must be made aware of all transfer arrangements prior to any agreement with another directly funded institution.

Annex A:

Providing External Assurance on Subcontracting Controls

Certificate

Lead Provider

We certify that the report prepared by _____ [insert name of external audit organisation] provides satisfactory assurance on the systems and controls we have in place to manage subcontractors delivering education and training funded by the Tees Valley Combined Authority in 2019 to 2020.

We certify that the report identified no recommendations or, where recommendations were identified, either these have been implemented or there is an implementation plan that sets out when the recommendations will be completed by.

The full copy of the report and, where relevant, the implementation plan are available to TVCA if required.

Name:

Job title:

Signature:

Date:

Audit Organisation

We certify that we have delivered a report of the subcontracting systems and controls of _____ [insert name of lead provider] in accordance with the requirements set out in 'TVCA 2019/20 Providing External Assurance on Subcontracting controls'.

Name:

Job title:

Signature:

Date: