

Subcontractor Policy 2020/21 including fees and charging.

July 2020

The aims of this policy are to provide existing and potential subcontractors with information about Luton Council, Adult Learning Service's reasons for subcontracting; how we select our potential partners; fees and charges, the services we provide and our terms for payment.

This is to ensure consistency, clarity and fairness for all partner organisations and Luton Council, Adult Learning Service (the Service). This policy covers the academic year 1st August 2020 to 31st July 2021

<https://www.lutonacl.ac.uk/policies.html>

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1. Rationale for subcontracting

The Service's vision is to provide high quality teaching and learning locally across Luton, which responds to national and local priorities for skills and learning and meets market needs and demands. Where the Service's traditional curriculum offer no longer matches the skills needs in Luton, it commissions provision which complements its own offer. This enables the Service to extend the range and accessibility of its provision to meet identified skills gaps in the county, thus building capacity to serve the best interests of learners, employers and the economy. Diversifying its offer allows the Service to engage with new markets and support the delivery of niche provision. Subcontracting provision will also be sourced when necessary for delivery required to assist local residents to recover from the impact of COVID19.

Subcontracting with a range of providers enables the Service to meet national, local and Service priorities.

Where the Service has identified a need for subcontracting details of the opportunity will be published on our website www.lutonacl.ac.uk. Providers who indicate an interest in working with us will be invited to begin a rigorous due diligence and pre-contracting process details of which will be available on the website.

The due diligence process and any associated procedures must have approval from the Service Manager before any form of subcontracting can be undertaken. Successful providers will receive a contracting letter and Service Level Agreement with relevant appendices including targets and payment schedules.

All subcontractors will undergo an annual review which may/may not lead to contract extensions. Any time critical documentation previously submitted such as Public Liability Insurance, etc will also need to be refreshed.

2. Maintaining Standards

In October 2017 the Service was inspected by Ofsted and rated as 'Good'. The Service seeks to engage subcontractors who have achieved a similar standard and who share an ethos of working for continuous improvement, we will therefore not subcontract with organisations who have been graded 3 or 4 by Ofsted.

The Service ensures subcontractors reach or exceed national standards set by Ofsted and the Education & Skills Funding Agency through a rigorous due diligence process. Once appointed, subcontractors are subject to a robust monitoring, review and evaluation process which provides both challenge and support, thus raising standards and improving outcomes for learners and employers.

Through its monitoring and review process, the Service enables subcontractors to share good practice and to learn from each other. Where areas for improvement are identified, the Service works with the subcontractor to build their capacity and capability to offer the best possible services to learners, thus reducing risk and improving performance. The Service also offers Workshop To Raise Awareness of Prevent (WRAP) training to all subcontractors in order to help safeguard residents of Luton from radicalisation.

Ultimately the Service and its subcontractors work together to develop high quality providers which benefit the sector as a whole, as well as individual providers and their learners. This means that residents have broader range of high quality provision that they can access in order to upskill.

3. Contingency Plan

All learners who are provided with education and training under an agreement between the Service and a subcontracting organisation remain the responsibility of the Service. The Service will follow robust pre-contracting processes and procedures to ensure the quality and stability of potential subcontracting organisations.

The Service mitigates risks by:

- Commissioning local providers where possible
- Commissioning provision for local needs
- Setting funding maximums for community learning provision

In the event of the following the Service will be responsible for making alternative arrangements for the delivery of education and training:

- The Service needs to withdraw from a subcontract arrangement, or
- A subcontractor withdraws from the arrangement, or
- A subcontractor goes into liquidation or administration

The Service will explore a range of options, to organise the continuation of education and training including:

- Using other local FE providers
- Using other existing subcontractors where provision matches
- Taking on the provision from the sub-contractor for the remainder of the contract period where resources permit
- Contracting with the next suitable bidder from the original bidding process

| Contingency | Change Factor | Action Required | Responsible |
|--|--|--------------------------------|---|
| Termination of existing subcontracting arrangement | New provider to be contracted New subcontracting documents required | Identify suitable new provider | Adult Skills or Community Learning Team Manager |

| | | | |
|--|---|---|--|
| New service provider engaged part way through a contract | <p>Course timetables/timeframes may change</p> <p>Course teachers may change</p> <p>Course venue may change</p> <p>Contract costs may increase</p> | Ensure changes are minimised as far as possible | Adult Skills or Community Learning Team Manager |
| Adopting service delivery from sub-contractor | <p>Course timetables/timeframes may change</p> <p>Course teachers may change</p> <p>Course venue may change</p> <p>Contract costs may increase</p> <p>Induction / training of temporary staff</p> | HR / payroll set up | Support Services Manager |
| | | Teacher induction & training | Programme Leader (Adult Skills team or Community team) |

4. Precontracting meeting

The Service communicates its reason for subcontracting to each subcontractor before each subcontracting relationship is agreed by publishing this policy online and providing a copy to subcontractors during pre-contracting meetings.

During the precontracting meeting the Service will discuss the services that we provide to the subcontractor and provide a list of specific costs for managing the subcontractor, quality monitoring activities and any other support activities.

The Service will provide the subcontractor with a copy of the costs and how each cost is reasonable and proportionate to delivery of the subcontracted teaching or learning and how each cost contributes to delivering high quality learning within their contract documentation.

The RAG rating for the subcontractor will be discussed as well as any additional support which may be required. This will be monitored throughout the contract and adjusted as required.

5. Fees

The Service will provide the following services to all providers:

Managing Subcontractor costs include:

- preparation of monthly Continuous Improvement Plan
- monitoring of attendance, achievement, learner numbers and associated data management
- monitoring feedback from learners and addressing complaints or compliments as necessary
- planning and procurement process (see below)
- due diligence process (see below)
- monthly monitoring visits and report writing, re-profiling targets as required.

- submitting subcontractor declarations throughout the year.
- funding and data management (see below)
- RAG rating for sub-contractors and teaching staff
- annual contract review meeting (see below)

Planning and Procurement Process

- programme planning based on local and national priorities
- development of tenders and/or procurement authorisation documentation
- tender and/or procurement authorisation process
- tender and/or procurement evaluation and award of contracts
- pre-contract site visit and risk assessment
- contract development, negotiation and agreement
- setting up of procurement facility for contract payments

Due Diligence Process

- development, implementation and management of the Due Diligence process in accordance with funding agency rules
- assessment of Due Diligence information
- support to complete the Service Due Diligence process
- support to pass the Education & Skills Funding Agency Due Diligence Gateway if applicable

Funding and Data Management

- maintaining awareness of and implement funding agency policy, rules and regulations
- maintain the Service's relationship with the funding agencies
- develop documentation and paperwork in accordance with the requirements of the funding agencies
- purchase and maintainance of a specialist Management Information System
- collect data, record it on the Service's Management Information System and submit accurate funding returns to the Education & Skills Funding Agency
- manage the Service's funding
- carry out ongoing internal audit
- manage external audits
- manage invoices and process contract payments to partner providers
- assess, process and administer Discretionary Learner Support Fund, Additional Learner Support and 24+ Advanced Learning Loans applications
- arrange Copyright Licensing Agency licence

Annual Contract Review Meeting

- carry out an end of year review of performance
- evaluate the contract

Quality Monitoring Activity costs include:

- internal Quality Assurance of ILP's and feedback
- Observation of Teaching, Learning and Assessment for each teacher and additional unannounced walk-throughs.
- mentoring of staff as required

- manage provision in accordance with the quality standards set out by Ofsted in the common inspection framework
- act as lead in an Ofsted inspection
- carry out observations of teaching and learning, assessment, initial advice and guidance
- provide ongoing support to remedy issues identified
- manage the self assessment process
- manage and monitor the continuous improvement plan
- collect feedback from learners and employers on the quality of provision and submit it to the funding agencies and Ofsted as required
- manage the contract
- review performance against targets
- review quality assurance processes
- provide ongoing support to remedy issues identified

Support Activity costs include:

- CPD for subcontractors – sharing good practice meetings
- Support for staff and sub-contractors as required.
- Biannual subcontractor meetings (see below)
- Provider induction (see below)

Biannual subcontractor meetings

- disseminate changes in policy and regulations
- share and exchange good practice
- support subcontractors in meeting and understanding Education & Skills Funding Agency, Ofsted, Luton Borough Council and Service requirements

Provider Induction - training in:

- funding policy, rules and regulations
- quality standards, including Ofsted standards as set out in the Common Inspection Framework
- completion of Service paperwork to Service standards, e.g. Learning Agreement, Register, Individual Learning Plan etc
- audit requirements for the type(s) of provision offered
- application processes for Discretionary Learner Support Fund, Additional Learning Support funding and 24+ Advanced Learning Loans
- The Service will also offer the Level 3 Award in Education and Training as needed at a cost of £600 per member of staff for community provision funded through our ESFA grant.

| Service | Cost | Description of how each specific cost is reasonable and proportionate to delivery of the subcontracted teaching or learning and how each cost contributes to delivering high quality learning |
|----------------------|------------------------------------|---|
| Managing subcontract | Approximately 9% of contract value | Contributing to a high quality of learning by ensuring that subcontractors have the necessary knowledge, skills and abilities to deliver the required service. |

| | | |
|-----------------------------|------------------------------------|--|
| | | Ensuring that subcontractors are achieving targets |
| Quality Monitoring Activity | Approximately 3% of contract value | Contributing to a high quality of learning by ensuring that the learner experience is comparable across subcontractors and with direct delivery by the Service. Providing feedback to subcontractors on what they are doing well and areas for improvement |
| Support Activities | Approximately 3% of contract value | Contributing to a high quality of learning by supporting organisations to meet the required standards through a robust system of feedback, mentoring, CPD sessions and one-2-one support. |

5.1 Subcontracting Costs – Community Learning

The Service retains 15% of the funding received from the Education & Skills Funding Agency /Ministry of Housing, Communities and Local Government / other funding bodies in order to cover costs incurred in carrying out the described activities:

Subcontractors will be RAG rated to initially to determine the level of support required. The RAG rating level will be communicated at the pre-contracting meeting.

5.2 Subcontracting - Apprenticeship provision

Applicable to subcontractors delivering provision under the **Apprenticeship** Programme. In consultation and agreement with individual subcontractors, the Service retains part of the funding earned by each apprentice to cover costs incurred in carrying out the following activities additional to those listed above:

- Promotional activities
- Recruitment support and process
- Employer support
- Apprentice induction
- Caseload Officer support and reviews
- Apprentice support software

5.3 Additional Fees

The funding retained by the Service will be increased where the Service incurs additional costs arising from providing additional services and from the management of increased levels of risk which require additional support, for example, higher frequency of monitoring visits, additional observations. The percentage will vary according to the type and level of support required. In addition, where the Service makes payments on behalf of the provider, these will be recovered.

Where the Service provides additional Services or incurs additional costs, a fee will be charged based on the costs incurred. For example:

| Service provided | Cost |
|--|---|
| Scheme approval | Awarding body fees + £26 per hour time spent. Average time to gain scheme approval - 30 hours |
| Awarding body registration and certification | Awarding body fees + £15 per learner administration fee |
| Internal verification | £33 per hour |
| Training | £110 per 2.5 hour session (£44 per hour of contact time) |
| Provision of accommodation | Hourly rate for accommodation and equipment + £10 booking fee |
| Copyright Licensing Agency (CLA) fees recovery | FE learners aged 16-18: £4.48 per FTE FE learners aged 19+ : £3.24 per FTE HE in FE learners : £7.50 per FTE (subject to amendment by the CLA) |
| Level 3 Award in Education and Training | £600 per member of staff enrolled. |

6. Payments

The Service will agree payment with its subcontractors based on:

- satisfactory delivery of agreed provision and/or services as detailed in the contract and associated appendices
- satisfactory completion and submission of paperwork and auditable documentation in accordance with the Funding Agencies' funding and audit guidance, and requirements such as making sure all the relevant forms, agreements, applications or other documents which are required to be sent to the Funding Agencies are, if necessary, completed and signed by the relevant authorised officer of the subcontractor and ensuring a learner does not exceed the maximum funding available in an academic year.
- where applicable, awarding body certification being received by the Service within the required timescales
- the subcontractor's adherence to the terms and conditions set out in the Contract and its appendices

Apprenticeship payments will always be based on the funding actually earned by each learner and may vary if funding rates and guidance change during the period of the contract.

Payments will be subject to review throughout the Contract period and may be adjusted as a result of targets being exceeded or under-achieved. Payments may also be adjusted if the required data,

evidence and paperwork, as detailed in the Service Level Agreement / contract and associated paperwork are not returned as requested, or as a result of an unsatisfactory audit.

Payments will be made on the submission of a valid invoice in accordance with Service Level Agreement/Contract. Interest will not be due for the purpose of the Late Payment of Commercial Debts (Interest) Act 1999 until 30 days after a valid invoice has been received by the Service. Invoices that are not presented in accordance with SLA/contract may suffer a delay in payment.

Payment for learners may be withheld where there has been:

- i. No confirmation of registration
- ii. The Service has notified the partner-provider that it is in dispute. Such notice will specify the nature of the dispute, the amount being withheld and the grounds for withholding.

The Service reserves the right to reclaim funding if the subcontractor cannot provide, on request, evidence of good controls and regularity in their sub-contracted provision.

The subcontractor will not levy fees or charges against any other person or organisation, other than to or through the Service for the Service's learners.

6.2 Payment Methodology – for Apprenticeship provision

6.2.1 Registration payment

Subject to the Service receiving from the subcontractor evidence of registration of an eligible learner under its contract and a valid invoice pertaining to said learner, the Service will pay 10% of the funding value for the learner's learning activity, in accordance with Service Level Agreement less the Service's management fee.

6.2.2 On programme payment

Learner on programme payments will be made depending on the duration of the programme as described in the Service Level Agreement.

6.2.3 Achievement payment

Upon satisfaction of the following criteria, the Service will pay the subcontractor the final 20% of the funding value for the learner's learning activity, in accordance with the terms of the SLA, less the Service's management fee:

- i. the learner fully achieving their qualification
- ii. evidence of that achievement being received by the Service within the required timescales
- iii. the Service receiving the required paperwork from the subcontractor in accordance with the "Management Information, audit requirements and paperwork" section of the contract
- iv. successful audit (within 4 weeks of receipt of all required paperwork)
- v. receipt of a valid invoice

7. Communication and Review of Policy

This policy will be communicated as follows:

- At the annual contract review meeting with each subcontractor (existing subcontractors)
- On the Service's website (<https://www.lutonacl.ac.uk/policies.html>)
- At contract negotiation

The policy will be reviewed annually or more frequently should changes in funding guidance require it.