

Due diligence checklist for lead providers and subcontractors



About this checklist

This checklist is based on the effective practice of existing partnerships and information available publicly via the [website](#) of the Skills Funding Agency (the Agency). A second checklist is also available on good practice in contracting.

The Agency requires that all arrangements between lead providers (those with a direct contract from the Chief Executive of the Skills Funding Agency), and sub-contractors are **confirmed in legally binding contracts**. All contracts, whether or not they are called service level agreements or contracts, need to include some mandatory clauses. Legally binding agreements should be drafted and/or checked by your legal adviser/s. You should also check tax and accounting implications of contracting and subcontracting with your accountant.

This checklist identifies key factors to consider before entering into a contract. They are drafted from the point of view of the lead provider. However, they also tell subcontractors what they should expect to have reviewed and checked by any potential lead provider. Subcontractors may like to consider to what extent the lead provider itself complies with the conditions in the due diligence checklist.

Lead providers should carry out due diligence **before** they enter into a contract. The scope and depth of due diligence should be proportionate to the size of the contract and to any other risk factors identified by the lead provider, such as the latest Ofsted inspection grade of the potential subcontractor or its previous performance, either in terms of learner outcomes or finance.

It is the responsibility of the lead provider to satisfy itself that the sub-contractor has been selected fairly through an open and transparent process and has sufficient capacity, capability, quality and business standing to deliver the provision that it being sub-contracted.

Checklist: Due Diligence

Factor to consider and check	Needs checking ✓ State reason for decision	If already checked, comment
<p>1. What is the subcontractor's financial health – previous accounts, cash flow and solvency?</p> <p>Are there any unsatisfied county court judgements against the subcontractor?</p>		
<p>2. Does the legal status (sole trader; limited liability company or partnership; charity; public body etc) of the subcontractor and its governance have implications for the proposed contract and its delivery?</p>		
<p>3. Has the subcontractor disclosed all contracts it holds and has held with the Skills Funding Agency and the Learning and Skills Council; and, in the case of terminated agreements, the reasons for the termination of those agreements?</p>		
<p>4. Has the subcontractor disclosed the names of its directors (or trustees) and senior managers together with details of their previous appointments, particularly with organisations who hold or have held funding agreements with the Skills Funding Agency or the Learning and Skills Council?</p>		

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5. Has the subcontractor sufficient capacity to deliver its commitments under the proposed contract whilst still meeting its other commitments?		
6. Is the subcontractor a party in any litigation which might affect its ability to deliver the proposed contract? For example, any action in the civil or criminal courts, or in an employment tribunal?		
7. To what extent do the lead provider's business strategies (e.g. for growth, diversification) match those of the subcontractor?		
8. Does the subcontractor comply with health and safety legislation ? Has it carried out health and safety risk assessments covering the proposed subcontracted learners?		
9. Has the subcontractor declared to the lead provider reportable injuries, diseases and dangerous occurrences covered by the RIDDOR regulations , together with the actions they have implemented to prevent reoccurrences? This should cover the previous three years as it is a specific Agency requirement.		

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<p>10. Does the subcontractor comply with legislation on employment (including the use of volunteers)?</p>		
<p>11. Does the subcontractor comply with legislation on immigration?</p>		
<p>12. Does the subcontractor have a policy on equality and diversity which goes beyond compliance with legislation?</p> <p>Does this policy promote diversity and make a commitment to raising achievement for all learners?</p> <p>Does the policy cover all groups: gender; ethnic origin; age (where appropriate); disability; transgender; ex-offenders; any others identified as underachieving?</p>		
<p>13. Does the subcontractor have policies for safeguarding young people and vulnerable adults?</p> <p>Do these policies include staff recruitment and vetting, training of all staff and learners, dealing with allegations and concerns, whistle-blowing, and checking employers and workplaces where appropriate and based on assessment of risk?</p>		

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14. Does the subcontractor have a policy for preventing and dealing effectively with bullying and harassment ?		
<p>15. Does the subcontractor comply with data protection legislation (including notifying the Information Commissioner’s Office that they process personal information)?</p> <p>Does it have appropriate data protection and security systems for the exchange of personal and financial data with the lead provider?</p> <p>Does the subcontractor have systems to ensure compliance with the Skills Funding Agency’s requirements for data collection and the keeping of records?</p>		
16. Does the subcontractor intend to subcontract any part of the provision to another provider? ‘Second level subcontracting’ requires the approval of the Agency?		
17. Does the subcontractor have appropriately qualified and trained staff to deliver the proposed contract effectively from its start?		
18. Does the subcontractor have the physical resources to deliver the proposed contract		

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effectively from its start?		
19. Does the subcontractor have appropriate learner support arrangements , including support for learners with disabilities and learning difficulties? Does this support include access to, or referral to, counselling or other specific help?		
20. Does the subcontractor have information, advice and guidance arrangements for learners?		
21. Does the subcontractor have a policy on promoting the health and well-being of learners?		
22. Does the subcontractor have a policy and processes for dealing effectively with complaints and compliments ?		
23. Does the subcontractor have a clear policy on learner discipline and sanctions ?		
24. How effective are the subcontractor's arrangements for communicating with learners ?		
25. How effective are the subcontractor's arrangements for communicating with		

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employers?		
26. Does the subcontractor have a policy on environmental sustainability ?		
27. Has the subcontractor a track record of implementing, reviewing and improving policies ? Does this review focus on the impact of policies on learners?		
28. Does the subcontractor have appropriate quality assurance arrangements : audits, self-assessment reports and improvement plans, internal and external verification of assessment?		
29. Does the subcontractor have at least a satisfactory Ofsted grade for any aspect of its overall performance or for the sector-subject area(s) of the proposed sub-contracted provision?		
30. Can the subcontractor provide evidence and verification (for example, references) to support the assertions it makes?		
31. Has the subcontractor taken advice from its legal adviser(s) and accountant(s) about the proposed contract and the implications of		

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subcontracting?		
32. Does the subcontractor understand fully all clauses in the proposed contract? Has it reviewed all the implications of them?		
33. Have lead provider and/or subcontractor considered support from the Learning and Skills Improvement Agency's MCL Support Programme? For more information see: www.excellencegateway.org.uk/MCLsupport		