

Funding Agreement Part 8

TEES VALLEY COMBINED AUTHORITY

Adult Education Budget

**Funding Higher-Risk Organisations and
Subcontractors 2022/2023**

July 2022, Version 1

FOR THE PURPOSE OF THIS DOCUMENT, THE TERM 'PROVIDER' MEANS THE RECIPIENT AND ANY OTHER ORGANISATION PROVIDING ADULT EDUCATION, TRAINING OR SKILLS PROVISION THAT IS FUNDED BY TVCA.

Background

1. The Tees Valley Combined Authority (TVCA) acting on behalf of the Secretary of State for Education has statutory duties and powers to secure the provision of high-quality education and training for adult learners funded by the TVCA Adult Education Budget (AEB). This includes funding providers of education and training, as set out in the Apprenticeships, Skills, Children and Learning Act 2009.
2. Most organisations that receive funding from TVCA will deliver education and training services in accordance with TVCA's terms and conditions of funding as detailed in their 2022/2023 Funding Agreement and TVCA 2022/2023 Funding and Performance Management Rules. However, some organisations will not always comply with these requirements. In a few cases, organisations may deliberately seek to gain financially at the expense of Tees Valley learners and the public.
3. TVCA must exercise appropriate control over funding for which it is responsible. In some circumstances, this will result in TVCA exercising discretion to prevent from funding organisations that represent a high risk to the proper use of public funds or cease funding with such organisations.

Purpose

4. The purpose of this document is to identify the criteria that would prevent an organisation being considered for funding by TVCA or result in the discontinuation of AEB funding to that organisation. This also applies to those proposing to deliver education and training services funded by TVCA AEB under a subcontracting arrangement. TVCA includes in its grant funding agreement the right to require a lead provider not to enter into or to stop subcontracting arrangements.
5. This document applies to all both public and private organisations and institutions that deliver adult education and training services funded by the TVCA AEB to Tees Valley residents.

Criteria for rejection of organisations and institutions seeking funding set out in the Public Contracts Regulations 2015

6. Regulation 57 of the Government's Public Contracts Regulations 2015 sets out several criteria for the rejection of public contracts. These are set out below.

Any provider requesting a Funding Agreement with TVCA must be excluded if the provider, any of its directors, or any other person who has powers of representation, decision, or control, has been convicted of any of the following:

- conspiracy which relates to participation in a criminal organisation
- corruption
- bribery
- fraud, where the fraud affects the financial interests of the European Communities and falls within the meaning of any of the following:
 - the offence of cheating HM Revenue and Customs
 - the offence of conspiracy to defraud
 - fraud or theft under the Theft Act 1968 and the Theft Act 1978
 - fraudulent trading under the Companies Act 1985
 - defrauding HM Revenue and Customs
 - an offence in connection with taxation in the European Community
 - destroying, defacing or concealing documents or procuring the execution of valuable security within the meaning of section 20 of the Theft Act 1968
 - any offence listed in section 41 of the Counter Terrorism Act 2008, or in Schedule 2 to that Act, where the court has determined that there is a terrorist connection
 - money laundering
 - an offence in connection with the proceeds of criminal conduct within the meaning of sections 93A, 93B or 93C of the Criminal Justice Act 1988
 - an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004
 - an offence under section 59A of the Sexual Offences Act 2003
 - an offence under section 71 of the Coroners and Justice Act 2009
 - an offence in connection with the proceeds of drug trafficking within the meaning of sections 49, 50 or 51 of the Drug Trafficking Act 1994
 - Any other offence within the meaning of Article 57(1) of the Public Sector Directive 2015

Any of the above criteria reported to TVCA during the funding agreement period will result in a review of the organisation's grant funding agreement and potential discontinuation of TVCA AEB funding for the remainder of the organisation's funding agreement period.

7. In addition, any organisation can be excluded if that organisation:

- is insolvent (if a company) or bankrupt (if an individual)
 - is guilty of grave professional misconduct, which renders its integrity questionable has not fulfilled his obligations relating to the payment of social security or taxes
 - has entered into agreements with other economic operators aimed at distorting competition
 - has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions
 - is guilty of serious misrepresentation in providing any information to the contracting authority in relation to a prospective bid
 - if relevant, is not properly licensed to provide services in the state in which the bidder is established
 - is not registered on the appropriate trade register in the member state in which it is established (a UK or Irish provider would be deemed to be registered on the professional or trade register if it is established in the UK and is certified as incorporated by the Registrar of Companies)
 - fails to report any criteria detailed within section 6 of this policy.
8. Where a criterion relates to a criminal offence, the Rehabilitation of Offenders Act 1974 (and subsequent amendments) may apply.

Additional criteria for rejection

9. TVCA can also refuse to fund or cease funding to organisations or refuse to permit subcontracting arrangements on the basis of the following criteria:
- Previous activities have resulted in significant repayment of Education and Skills Funding Agency (ESFA) and Tees Valley Combined Authority (TVCA) funding within the last two years (£100,000 or 5% of contract value, whichever is the higher)
 - Failure to repay funding due to the ESFA or other government body in excess of £50,000
 - Failure to repay funding due under a subcontract to deliver education and training services funded by the ESFA and TVCA in excess of £50,000
 - Information from awarding bodies identifying significant irregularities in the award of qualifications within the last three years
 - Two or more instances where the ESFA, TVCA or its agents have audited the provision of a lead provider and identified issues of non-compliance. This is noncompliance with conditions of funding within the last two years

- Ongoing investigation relating to suspicion of fraud or irregularity, or possible failure to comply with conditions of funding under an existing funding agreement or subcontract
 - Early termination of a funding agreement or a subcontract to deliver education and training services funded by the ESFA or TVCA within the last three years
 - Withdrawal of funding following the failure to comply with a Notice of Withdrawal of Funding, or failure to remedy a serious breach of contract within the last three years.
10. TVCA can refuse to fund or prevent subcontracting with any organisation, which has a Director, Governor, senior employee, or shareholder associated to the criteria above. This also applies if they were previously a Director, Governor, senior employee, or shareholder, in another organisation where one or more of the above criteria apply.
11. TVCA can refuse to fund or prevent subcontracting with any provider or organisation that has a Director, Governor or senior employee who has been dismissed for gross misconduct. This criterion is extended to those who resigned whilst suspended from employment and subject to a disciplinary investigation concerning allegations of gross misconduct. For organisations with shareholders, this is applicable if the shareholder was previously one of its employees or employed by a predecessor body, or other Government body.

Application of the criteria.

12. Where any of the criteria set out in paragraphs 6 to 11 above apply to any organisation, TVCA may take the following action:
- exclude an organisation from completing the process for a funding award
 - cease funding the organisation for the remainder of the funding agreement period.
13. If action is taken because of an ongoing investigation relating to suspicion of fraud or irregularity, the position will be reviewed at the conclusion of the investigation. This will determine whether an organisation should be permanently excluded from receiving funding. This will also be applied to organisations that fail to comply with conditions of funding under an existing ESFA funding agreement or subcontract and are also delivering provision to Tees Valley learners.

Decision making process

14. We will publish this document on our TVCA website so that all relevant providers and organisations are aware of the additional criteria on which TVCA may refuse a Provider Delivery Plan, prevent subcontracting or cease funding. The Chief Executive of TVCA, or a member of staff to who has delegated authority, will decide whether to take any of the actions set out in paragraph 12.

15. Normally, we will notify the organisation concerned of the proposed decision, and the reasons for it, and give them the opportunity to make representations. We will consider any representation before making a final decision and communicate the reasons for the decision.
16. We will apply the process in the above in all cases, except where action is taken because of an ongoing investigation. This includes serious allegations of fraud or irregularity and informing the organisation could prejudice the investigation. However, we will take all reasonable steps to conclude the investigation quickly and reach a final decision.

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