

FACT SHEET - SUBCONTRACTING OF TRAINING AND ASSESSMENT: 2021 REQUEST FOR APPROVAL

This Fact Sheet provides an overview of the application process, including the eligibility and evaluation criteria, for a training provider's request to subcontract training and/or assessment under the 2021 VET Funding Contracts. It should be read in conjunction with Contract Notification 2020-18.

BACKGROUND

The *Skills First* agenda includes a commitment to the delivery of high quality training and assessment.

Reflecting this commitment, Clause 6 of the 2021 VET Funding Contracts requires that proposed delivery of training and/or assessment by a third party must be approved by the Department of Education and Training (the Department).

While the Department recognises that subcontracting can be a valid and reasonable approach to business, any proposed subcontracting of training and/or assessment will need to demonstrate that each of the following criterion applies:

- **Genuine and specialised:** that the training addresses a critical labour market need, is not primarily supply driven, and requires specialisation (skills, infrastructure, etc) not available to the training provider
- **Limited:** that the scale, scope and time period of the arrangement is limited
- **Governance:** that the training provider has robust arrangements in place to ensure appropriate oversight of the arrangement, including the quality of the training and assessment delivered.

These three elements form the basis for the Department's assessment, and are reflected in the questions that training providers must address in their application.

APPLICATION PROCESS AND TIMING

To subcontract training and assessment in 2020, training providers must submit the following completed forms via SVTS under 'Skills First VET Funding Contract – Subcontracting of Training Services':

- the 'Request for Approval of Subcontracting – 2021' form; and
- the 'Subcontractor's Declaration – 2021 form.

Failure to submit both forms will be deemed by the Department as an incomplete application and will be considered as not having met the eligibility criteria.

The process for seeking approval of subcontracting, including the supporting information required by the Department, is subject to change.

Applications will be accepted via SVTS from December 2020. The Department will publish a notification on SVTS advising of the exact timing.

The Department will only accept subcontracting applications for course commencements in the 2021 calendar year (1 January 2021 to 31 December 2021).

SCOPE OF SUBCONTRACTING

The Department will consider subcontracting to have taken place in circumstances where any individual who carries out any part of a training provider's training services is not:

- a) an employee or officer of the training provider; acting in their capacity as such an employee or officer; or
- b) a sole trader engaged directly by the training provider.

Where an 'auspicing arrangement', 'partnership' or 'collaboration' between a training provider and a third party fulfils the characteristics of a subcontracting arrangement, the arrangement will be treated as such and will require the approval of the Department.

If a training provider is unsure whether an arrangement with another entity or individual falls under the contractual definition of subcontracting (Clause 6), the Department recommends submitting a SVTS enquiry to seek confirmation before entering into the arrangement.

Notwithstanding the Department's approval of a particular subcontracting arrangement, training providers remain responsible for the quality of the services, and compliance with all contractual requirements, of any third party they engage.

What is a sole trader?

Anecdotal evidence indicates it may be common for training providers to think of a person as a 'sole trader' on the basis that they own and operate their business as an individual, rather than whether they own and operate their business with a company structure. For example, the engagement of a professional plumber to provide training and assessment (and no other Training Services) in the Certificate III in Plumbing, and making payment to the plumber's proprietary limited company which exists primarily as a plumbing business.

As the arrangement described above is with a company rather than with a sole trader, it is considered to be a subcontracting arrangement for the purposes of the VET Funding Contract.

However, noting:

- the Department's interest in a vocational education and training system with high quality trainers and assessors who hold current industry experience; and
- the individual is engaged for the sole purpose of providing training and assessment,

the Department will look more favourably on subcontracting applications in these instances. Training providers should make clear the nature of the arrangement when lodging such an application.

Other arrangements (for example labour hire or engaging an individual who does not own or control the relevant company) would not be considered as favourably.

LIMITS ON INDIVIDUAL TRAINING PROVIDERS

The following limits are applied to the number of commencements a training provider can seek Departmental approval to subcontract:

Contract type	2021 maximum number of subcontracted commencements	Example
2021 Standard VET Funding Contract Skills First Program and 2021 VET Funding Contract Skills First Program (Non-Victorian Based Training Provider Delivering to a National Enterprise)	40% of the Commencement Allocation for the 2021 calendar year, <u>up to a maximum</u> of 1,000 subcontracted commencements.	Training Provider X's Schedule 2 had a Commencement Allocation of 1,000 commencements for 2021. Its subcontracting limit for the year would be 400. Training Provider Y's Schedule 2 had a Commencement Allocation of 500 commencements for 2021. Its subcontracting limit for the year would be 200. Training Provider Z's Schedule 2 had a Commencement Allocation of 3,000 commencements for 2020. Its subcontracting limit for the year would be 1,000.
2021 TAFE VET Funding Contract Skills First Program and 2021 Dual Sector VET Funding Contract Skills First Program	40% of commencements for the 2021 calendar year, <u>up to a maximum</u> of 1,000 subcontracted commencements.	TAFE X expects to have 5,000 commencements for 2021. Its subcontracting limit for the year would be 1,000.

Where the Department approves a subcontracting arrangement, this does not increase the training provider's Commencement Allocation.

LIMITS ON INDIVIDUAL SUBCONTRACTORS

The commencement limit on individual subcontractors will be set at 200 commencements in total per year per subcontractor (i.e. 200 in total across all training providers with whom the subcontractor has a relationship). This limit reflects the Department's view that an organisation acting as a subcontractor should not operate at a greater scale than a training provider holding a Restricted VET Funding Contract.

This commencement limit on individual subcontractors extends to all related entities of a subcontractor. For example, if two subcontractors are related entities as per the definition provided in the 'Subcontractor's Declaration – 2021' form, they will have a combined limit of 200 commencements (not 200 commencements for each organisation).

If the Department receives multiple proposals which would take a training provider or a subcontractor over their commencement limit, the Department will determine, at its sole discretion, how many commencements (if any) are approved at a particular training provider and/or subcontractor.

DUE DILIGENCE

Training providers are expected to conduct their own due diligence when entering into contractual relationships with other organisations to ensure they are meeting their obligations under the 2021 VET Funding Contracts Skills First Program.

In particular, training providers are reminded of the requirement to not engage, employ, contract or otherwise deal with any Disallowed Person as defined in Clause 1.1 of the 2021 VET Funding Contracts Skills First Program.

Training providers should be aware that the Department will also conduct due diligence in relation to any request lodged.

EVALUATION CRITERIA

As outlined in the application documentation, the proposed subcontracting arrangement must fully address the evaluation criteria: genuine and specialised, limited, and governance.

The application documentation contains five overarching questions which must be answered in detail. To help training providers address the criteria, each of these overarching questions has been broken down into sub-questions.

Criteria 1: Genuine and specialised

Question 1: How does the proposed subcontracting arrangement address a critical need and/or existing labour market demand?

- **What is the critical need and/or existing labour market demand for the training?**

The training provider must provide verifiable evidence to demonstrate a critical need or labour market demand for the training. For example, a good response should include evidence from an employer supporting the need for the training and assessment of employees, or evidence of a major infrastructure project that would require an increase in skilled employees (where relevant).

- **How does the proposed training delivery address this critical need or demand?**

The training provider must provide detailed information about how the training delivery will address the critical need or demand.

- **What career pathways or job opportunities would the proposed training delivery provide for students? Please provide supporting evidence such as letters from employers or industry.**

Particular attention should be given to how this arrangement is in the interests of students, including the career pathways or job opportunities that would result from the student completing the course under the proposed subcontracting arrangement.

- **Are there any other relevant details?**

Opportunity to further expand on the overarching question.

Question 2: Why can't the proposed training and assessment for subcontracting be delivered directly by the training provider? Please provide details in the relevant section(s) below about:

a) why your organisation can't deliver the training

b) how the subcontractor will address this need.

- **What are the capacity issues affecting your organisation's ability to deliver the training, and how will this be addressed by the subcontractor?**

If relevant, the training provider must provide details about its capacity issues and why it is unable to increase capacity to deliver the training.

- **What are the specialist skills/experience your organisation lacks and how will this be addressed by the subcontractor? Include relevant skills and qualifications of the subcontractor.**

The training provider should provide details about the specialist skills or experience required for delivering the training, and why it does not have this capability. Include information about relevant qualifications and proven industry experience of each of the trainers to be used, including currency of industry connections, experience and knowledge.

- **What infrastructure does your organisation lack, and how will this be addressed by the subcontractor?**

If relevant, the training provider must provide details about the infrastructure required to deliver the training and why it is not reasonable for it to have this infrastructure. Include details about the infrastructure the proposed subcontractor has that is not available to the training provider.

- **Are there any other limitations on your organisation delivering the training, and how will these be addressed by the subcontractor?**

Opportunity to further expand on the overarching question.

Criteria 2: Limited

Question 3: What is the student cohort your organisation is targeting? Please provide details in the relevant sections below.

- **What are the characteristics of the student cohort?**

The training provider must provide details about the target cohort, the reasons why it has chosen this cohort and how the training will be limited to this cohort.

- **What is the anticipated size of the student cohort, and why?**

The training provider must provide details about the anticipated size of the student cohort, and the reasons for the limited size. Approved subcontracting arrangements will be strictly limited to a set number of commencements.

- **When do you anticipate the training will be delivered, and why?**

The training provider must provide details about when the training will be delivered, and the reasons why the training will be delivered over a particular period.

- **Are there any other relevant details?**

Opportunity to further expand on the overarching question.

Question 4: How will the delivery of the program be limited?

Applications for delivery of an entire program by a subcontractor will only be approved where there are exceptional circumstances and approval would be in the interests of students.

- **Will the delivery of the program be shared between the subcontractor and your organisation? Please provide details below.**

The Department expects that subcontracting arrangements will involve delivery that is shared between the training provider and the subcontractor. The training provider should provide details about how the delivery will be shared. If the delivery is shared, the training provider must also provide a breakdown of which units will be delivered by the training provider and subcontractor respectively.

Applications for delivery of an entire program by a subcontractor will only be approved where there are exceptional circumstances and approval would be in the interest of students.

- **If the delivery of the program will not be shared between the subcontractor and your organisation, provide details about why there are exceptional circumstances and why approval would be in the interests of students.**

Applications for delivery of an entire program by a subcontractor will only be approved where there are exceptional circumstances **and** approval would be in the interest of students. The training provider must provide a detailed description of these circumstances and why approval would be in the interests of students.

Circumstances may include, as an example, delivering specialised training to a priority cohort in a remote area where students would not be able to access the training from another provider, and it is not possible for the training provider to deliver the training in that area.

- **Will the delivery be limited to a specific region or area? If yes, provide details.**

If the delivery will be limited to a specific region or area, the training provider should provide details about the area the training will be delivered in, the reasons for delivering in that area, the availability of training in the area and the postcode of the area. The training provider should include any region-specific information that is relevant to the proposed training delivery.

- **Are there any other relevant details?**

Opportunity to further expand on the overarching question.

Criteria 3: Governance

Question 5: How will your organisation ensure appropriate oversight and

- **How will contact be maintained with the subcontractor?**

The training provider should provide details about how it will maintain contact with the subcontractor, and how often.

- **How will the quality of training services delivered by the subcontractor be monitored?**

control over the subcontractor?

The training provider should describe the processes and procedures it will implement to monitor the quality of training services delivered by the subcontractor, and its approach to addressing quality issues if they arise.

- **How will data about the subcontractor's delivery of training services be collected and validated?**

The training provider should describe its process for collecting and validating data about the subcontracted entity's delivery of training and assessment, and reporting of student records

- **What procedures will be implemented to ensure accurate and consistent reporting of subcontracted delivery of training services**

The training provider should describe the structures and systems it will implement to ensure consistent recording, and internal communication about subcontracting arrangements.

OTHER INFORMATION

The Department will give more weight to applications where the subcontractor has specialised expertise. Subcontractors that are generalists or that deliver across multiple unrelated training packages (e.g. construction and hospitality) will be considered less favourably, except where they are delivering in regional areas or where there are no alternative suppliers.

APPROVAL OF SUBCONTRACTING ARRANGEMENTS

The Department will evaluate applications and then provide formal advice to the requesting training provider that indicates the decision to approve or not approve. Approval advice will include details of the approved subcontractor, courses and student commencements for 2021.

Should the subcontracting arrangement vary during the year, such as changes to approved course/s or student commencement numbers, the training provider must contact the Department in order to seek a variation to the arrangement before the variation takes effect, via SVTS under the 'Skills First VET Funding Contract – Subcontracting of Training Services' category.

REPORTING OF SUBCONTRACTED COMMENCEMENTS

The *Victorian VET Student Statistical Collection Guidelines - 2020* require training providers to report the *Deliver Provider ABN* of the subcontractor against each Subject Enrolment on the Training Activity (NAT00120) file. This is to distinguish between training delivered by the training provider and that by a subcontracted entity.

WHO CAN I CONTACT IF I REQUIRE FURTHER INFORMATION?

If you have a question regarding subcontracting, please contact the Department using the Enquiry function of SVTS under the 'Skills First VET Funding Contract – Subcontracting of Training Services' category.

If you have difficulty in completing the 'Request for Approval of Subcontracting - 2021 form or you wish to discuss your application, please include a phone number in your Enquiry so that a Departmental representative can contact you to provide advice.