



Staff Policy

Sub-Contracting Fees and Charges Policy 2017-18

Overall Responsibility	Principal and Chief Executive
Lead Responsible	Vice Principal Finance and Resources
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Introduction

1. The policy applies to all sub-contracted activity supported with funds supplied by the Education and Skills Funding Agency (ESFA) or any successor organisations.

Context

2. All Colleges were required to have in place, by 01 August 2013, a policy on sub-contracting prior to any activity. The content of this policy was developed in line with Association of Colleges (AoC)/The Association of Employment and Learning Providers (AELP) Common Accord, the former SFA's Funding rules and the LSIS Supply Chain Management document. This document takes account of the former EFA's sub-contracting control regulations for 2016-17 (the 2017-18 regulations are not yet published) and the ESFA's sub-contracting rules contained in their Common Funding Rules 2017-2018, Financial Memorandum and contract documentation, plus their document "*Providing external assurance on subcontracting controls*" dated September 2015.

Overarching Principles

3. The College will use its sub-contractors to optimise the impact and effectiveness of service delivery to the end user. The College will therefore ensure that:
 - a. Sub-contractor management activities comply with the principles of best practice in the skills sector. In particular they will be guided by the principles given in the LSIS publication "*Supply Chain Management – a good practice guide for the post-16 skills sector*" (Nov 2012 and subsequent iterations) and the ESFA rules referred to above.
 - b. The College will at all times undertake fair and transparent procurement activities, conducting robust due diligence procedures on potential sub-contractors to ensure compliance with the Common Accord at all levels and to ensure the highest quality of learning delivery is made available, demonstrating value for money and a positive impact on learner lives, as set out in its *Franchise Provider Appointment and Quality Procedure*.
 - c. The funding that is retained by the College will be related to the costs of the services provided. These services, and the levels of funding being retained for them, will be clearly documented and agreed by all parties. The rates of such retained funding will be commercially viable for both sides and will be negotiated and agreed in a fair and transparent manner. They will be proportionate to the actual services being provided.
 - d. Where disputes between sub-contractors cannot be resolved through mutually agreed internal resolution procedures, the College will submit to independent outside arbitration or mediation and abide by its findings. Sub-contract documents will require both parties to agree that the achievements of the sub-contracts are attained through adherence to both the letter and spirit of contracts or partnerships. Signatories therefore

commit that all discussions, communications, negotiations and actions undertaken to build, maintain and develop supply chains will be conducted in good faith in accordance with the Overarching Principle.

- e. The College at all times takes full responsibility for the sub-contracted learners; they are College learners and the College is responsible for their health and safety, the quality of the teaching and all other aspects of their learning. The College must ensure the learners know this. If the sub-contractor fails to deliver, the College will be responsible for making any necessary alternative arrangements.
- f. This document only applies to “provision sub-contracting”; that is where one or more entire programmes or frameworks are delivered by a third party. It does not cover the delivery of services or part programmes by a third party.

Rationale for Sub-contracting

4. The College engages with sub-contractors in strategic initiatives to better meet customer needs. All sub-contracting must meet the College’s strategic aims and enhance the quality of its offer to learners. Specific reasons will include:
 - To provide immediate provision whilst expanding direct capacity. This might include working with sub-contractors to explore and learn about new frameworks or sectors prior to investment in resources.
 - To provide access to, or engagement with, a new range of customers.
 - To support learners for whom attendance at a large college site would be difficult.
 - To ensure delivery intention is met where there is a recognised risk in direct provision (e.g. through JCP referrals not being realised).
 - To support another provider to develop capacity/quality.
 - To provide niche delivery where the cost of developing direct delivery would be inappropriate.
 - To support employers with a wide geographic requirement

Quality Assurance

5. Sub-contracted activity is a fundamental part of the College’s provision. The quality of the provision will be monitored and managed through the existing College QA processes and procedures, as amended in order to fully encompass all sub-contracted activity. Each sub-contractor will receive a regular and substantial programme of quality assurance checks, including short-notice visits and interviews with staff and learners.

6. This Policy positions sub-contracted provision as a core part of College activity to enable continuous improvements in the quality of teaching and learning for both the College and its sub-contractors. This will be achieved through the sharing of effective practice across the sub-contractor network, for example through the Self Assessment Report process.
7. All sub-contractors are expected to be fully compliant with the College safeguarding procedures and Prevent strategy against radicalisation, as set out in the separate Franchise Safeguarding Policy.
8. The detailed quality procedures are set out in the College's *Franchise Provider Appointment and Quality Procedure*.
9. Sub-contractors who are independently inspected by Ofsted and graded "Inadequate" will have their contract terminated as soon as practicable.

Agreements with Sub-contractors

10. All sub-contractors must have signed a legally binding written contract.
11. Prior to any sub-contract being signed, the College will complete a comprehensive due diligence process including financial, quality, staffing, health & safety and exam board approval checks. No sub-contractor will be engaged if they have received an adverse risk warning from a credit agency, if their most recent accounts are overdue, or if they are in a process which could lead to them entering administration or being wound up. The procedure is set out in the College's *Franchise Provider Appointment and Quality Procedure*.
12. When signing the sub-contract, the Principal must also sign to the effect that he is satisfied the proposed sub-contractor is high quality and low risk.
13. All sub-contractors must be legal entities. All ESFA funded sub-contractors with annual contracts over £100k must be on the Register of Training Organisations.
14. The sub-contract will specify that the sub-contractor must meet the relevant funding bodies' regulations, and will include any contract terms specifically required by the funding bodies. Double funding is not permitted. No second-level sub-contracting will be permitted without the written permission of both the College and the funding body.
15. The College will audit sub-contracted learning to ensure the programmes and learners meet the evidence requirements of the relevant funding regulations. These audit visits will check learner existence, eligibility and attendance and education, health & care plans, and will include short-notice visits and interviews with staff and learners.
16. The College will only normally sub-contract ESFA activity to sub-contractors who deliver niche provision to learners in the same geographical catchment area that the college draws from. 'Distant' sub-contracting of ESFA activity

will only be considered if there is a strong rationale, for example a single employer over a large area, and with the permission of the funding body.

17. The College will require all ESFA funded sub-contractors to declare the details of all other ESFA sub-contracts they hold to enable the determination of the 'lead provider'.
18. The College will normally expect to be the centre approved by the awarding body for the qualifications being offered by any sub-contractor.

Publication of Information Relating to Sub-contracting

19. In compliance with ESFA funding rules, the College will publish this sub-contracting fees and charges policy on its website before the start of each academic year
20. The College will ensure all actual and potential sub-contractors have sight of this policy and any other relevant documents. The following points should be noted.
 - a. The rationale used to determine the level of fee retained through each sub-contract is a risk based approach.
 - b. The contributory risk factors that would result in differences in fees charged for, or support provided to, different sub-contractors might include:
 - Previous track record
 - Success levels
 - Quality of teaching, learning and assessment
 - Rigour of quality assurance systems and processes
 - Ofsted Common Inspection Framework rating
 - Type of customers to be engaged
 - Type of provision to be undertaken
 - Sub-contract duration
 - Volume of activity
 - Facilities provided
 - c. The range of fees charged by the College is typically from 20-30% based upon the risks identified above and the level of support required.
 - d. Payment terms will be agreed between the College and sub-contractors – timing of payments in relation to delivering provision and timescale for paying invoices and claims for funding received. Valid invoices will be paid within 30 days. The College may offset payments against any money owed to it by the sub-contractor.
 - e. The support sub-contractors will receive in return for the fees charged varies in line with the list in (b) above.
21. The college will declare to the ESFA all its funded sub-contractors twice a year, in the format and to the timescale required by them.

22. In December 2017 the College will publish on its web site details of all ESFA funded sub-contractors and the funding we and they received during 2016-17. This publication will be made within 30 days of the final ILR for the year.

Communication

23. This policy will be reviewed in each summer term and updated as required. It will be published on the College web site during the July prior to the start of the academic year in which it will be applied. Potential sub-contractors will be directed to it as the starting point in any relationship.

Fees and Charges and Risk Factors

24. In line with 3 (c) the College Management fee varies according to a number of factors as identified under 20 (b). The management fee represents the total cost that the College incurs in effectively identifying, selecting and managing all sub-contracted provision. This includes the minimum amount of QA activity that the College would attach to the lowest possible risk sub-contractor.

Additional Support for Sub-contractors

25. Additional support may be given to each sub-contractor and will be negotiated with that sub-contractor, but will be based on a 'risk' approach and may include:
- Additional site visits
 - Additional lesson observation
 - Additional tutor support
 - More rigorous verification
 - More extensive support for improving the quality of teaching, learning and assessment
 - Support in meeting the Ofsted Common Inspection Framework requirements
 - Developing appropriate qualifications and study programmes to meet learner needs
 - Additional compliance and monitoring visits

Contingency Plans

26. The College will take action in the event that:
- It needs to withdraw from a sub-contract arrangement
 - a sub-contractor withdraws from the arrangement, or
 - a sub-contractor goes into liquidation or administration.
27. These events are uncommon but not unknown. In the event of one of them, the College will, within 7 days, make plans to execute the action needed, protect the interests of the learners and inform the funding body. These plans may include one or more of the following:

- Emergency discussions with the sub-contractor and/or the funding body
- Offer the learners direct provision with the College.
- Offer the learners transfer to another sub-contractor.
- Take over the sub-contractor's staff and premises.
- Identify a project manager and necessary College resources.
- Write to the sub-contractor to formally terminate the contract, with reasons.
- Write to the funding body to advise them of the change.
- Commission the internal or external auditors to investigate any issues requiring their work
- Invoke the College's Disaster Recovery Plan if the impact is great.

Additional Charges

28. The College may also retain funding to cover the cost of any funded activity that it might undertake on behalf of the sub-contractor such as:

- Awarding Organisation fees and charges
- Hiring of facilities/equipment within/from the College
- Internal Verification
- Learner registration/examination costs
- Costs of developing specific facilities to deliver the provision
- Additional administration costs, for example for Element 3 Additional Learning Support

External Assurance

29. If required by the ESFA, the College will commission external assurance from an auditor in respect of its sub-contracting controls for ESFA funded provision.
30. Sub-contracted provision is regarded as high risk, and aspects of sub-contracted delivery will be included in the College's Internal Audit programme each year.