



# **Subcontracting Fees and Charges Policy 2020-2021**

North Warwickshire and South Leicestershire College

Deputy Principal

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## Subcontracting Fees and Charges Policy 2020-2021

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# Subcontracting Fees and Charges Policy 2020-2021

## 1. Purpose and Objectives

- 1.1 The purpose of the Subcontracting Fees and Charges Policy is to set out the College's rationale for working within sub-contractor partnership working arrangements and the approach taken to determine the fees and charges expected within such work.
- 1.2 The Policy applies to provision subcontracting supported with funds supplied by the Education and Skills Funding Agency (ESFA), European Social Fund (ESF) or any successor organisations, the Greater London Authority and the West Midlands Combined Authority. This Policy only relates to 'provision subcontracting' i.e. Subcontracted delivery of full programmes. It will not include the delivery of a service as part of the delivery of a programme.
- 1.3 The ESFA and the devolved authorities imposes guidance in this area and as such this Policy is directly influenced by this guidance which is contained within the Funding Rules 2020-21 documents.
- 1.4 This Policy is designed to ensure:
  - i. The provision offered by the subcontractor organisations supports the strategic objectives of the College and to optimise the impact and effectiveness of its delivery to the end user.
  - ii. That the College's learning mission, commitments and values are upheld by subcontractor organisations
  - iii. That subcontracted arrangements are delivered within a robust framework which is transparent, legal and in the best interests of the parties involved
  - iv. That subcontracted provision is fit for purpose and of high quality
  - v. That learners receive the best service possible
  - vi. That subcontracted arrangements adhere to relevant ESFA guidelines, including the devolved authorities and to the College's relevant policies, including Equality and Diversity and Safeguarding, including Prevent.
- 1.5 The College will not subcontract to meet short-term funding objectives.

## 2. Responsibilities

- 2.1 The College and all subcontractors comply with the Agency Funding Rules and any other relevant guidance and future updates in all matters regarding the delivery of the provision. The College holds full accountability for education and training provided to all learners under a subcontract. If any subcontractor fails to deliver, the College will be responsible for making alternative arrangements for the delivery of education and training (and/or repaying ESFA).
- 2.2 The College will create and maintain a contingency plan in place for learners in the event that:
  - i. there is a need to withdraw from a subcontract arrangement
  - ii. a subcontractor withdraws from the arrangement, or
  - iii. a subcontractor goes into liquidation or administration.
- 2.3 The College commits to ensuring that appropriate resources are put in place to manage and support subcontracted provision. The College will ensure that the staff working on subcontracted provision have the appropriate knowledge, skills and experience to successfully procure, contract with and manage subcontractors.
- 2.4 The College will monitor, review and evaluate in order to inform corrective, preventative and improvement actions and manage risk through contingency planning. If underperformance is identified, it will be addressed through measured and targeted action plans backed by support and development from the College.

- 2.5 In partnership with subcontractors, the College operates in the spirit of support, co-working and transparency and will endeavour to learn from subcontractors, recognise and share their good practice where appropriate.
- 2.6 In accordance with the AoC's "Common Accord" protocol, the College will seek to use its supply chains to optimise the impact and effectiveness of service delivery to the end user. The College will therefore ensure that:
- i. Supply chain management activities align with the principles of best practice in the skills sector. Accordingly, 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' (21 Jan 2013 and subsequent iterations).
  - ii. The College will at all times undertake fair and transparent procurement activities, conducting robust due diligence procedures on potential subcontractors to ensure compliance with the Common Accord at all levels and ensure the highest quality of learning delivery is made available, demonstrating value for money and a positive impact on learner lives.
  - iii. The funding for learning 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, and will relate to the actual services being provided.
  - iv. Where disputes between supply chain partners cannot be resolved through mutually agreed internal resolution procedures, the College will submit the dispute to independent outside arbitration or mediation and abide by its findings. Contract documents will require both parties to agree that the achievements of supply chains 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.
- 2.7 NWSLC will undertake a financial health assessment of all subcontractors. This is to mitigate the risk to the College and the contracts potentially let to a subcontractor. Subcontractors with proposed contract values in excess of £100,000 are required to register and pass the ESFA Register of Training Organisation (ROTO) before a subcontract can be let.
- Further investigations of the subcontractor would be undertaken if the provider has been encompassed in any of the following criteria:
- i. Ofsted has awarded the provider an inadequate grade.
  - ii. Any irregular financial or delivery activity arises such as credit ratings that move to 'above average risk'.
  - iii. Sanctions are placed on the subcontractor by the awarding organisation.
  - iv. Non-delivery of training.
  - v. Negative feedback received from learners or employers.
  - vi. Failure to meet the performance criteria detailed within the contract.
- Ongoing non-compliance would trigger the penalty clauses included in the contract.
- 2.8 The College will only use subcontractors who the Governing Body and the Accounting Officer determine as being of high quality and low risk.
- 2.9 The College will have robust procedures in place to ensure subcontracting does not lead to the inadvertent funding of extremist organisations.
- 2.10 The College will ensure that there is no second level of subcontracting.
- 2.11 The College will obtain an annual report from an external auditor if the ESFA or Combined Authorities funding with the delivery subcontractors will exceed £100,000 in any one funding year.

### **3. Reasons for Subcontracting**

- 3.1 The College engages with subcontractor organisations to better meet customer needs. Reasons include but are not limited to:
- i. Delivery of niche provision.
  - ii. To widen the range and scope of provision offered by the College in terms of engagement, retention and progression opportunities.
  - iii. To contract expert teaching and resources in a cost effective manner.
  - iv. To increase learner and employer engagement between the organisations.
  - v. To align with College strategy to meet Government priority targets in learner groups and outcomes.
  - vi. To deliver provision which engages hard-to-reach learners for example those 'Not in Employment, Education or Training' (NEETs) with the ultimate aim of progression into mainstream provision.
  - vii. To respond to meet customer demand (learners, employers and community).
  - viii. To broaden the College curriculum offer into new market sectors in line with Local Enterprise Partnership (LEP) priorities.
  - ix. To capacity build both organisations in order to respond to new projects and priorities and expand College territory to wider communities both locally and nationally.
  - x. To develop and support small local training providers.
- 3.2 The College will only use subcontractors who the College's Corporations and Accounting Officer determine are of a high quality and low risk. Subcontracts will not be entered into unless the College's Corporations and Accounting Officer are satisfied that subcontracts proposed meet the College's strategic aims and enhances the quality of offer to learners. The College does not subcontract to meet short-term funding objectives.

### **4. Contribution to Improving Teaching and Learning**

- 4.1 The College has a dedicated Contracts Team, led by the Contracts and Partnerships Manager, who focuses on the selection, contracting, monitoring, intervention and review of all subcontracting arrangements within the College. This Policy positions subcontracted provision as a core part of College activity to enable continuous improvements in the quality of teaching, learning and assessment for the College and their subcontractors.
- 4.2 Subcontractors are supported by the College to maintain the same high quality standards as expected across all aspects of College delivery.
- 4.3 The College's approach to ensuring the quality of subcontracted provision is set out in the following key steps:
- i. Requesting the complete quality assurance policies, processes and procedures that the subcontractor implements to ensure the quality of their provision.
  - ii. Collecting and examining the output from the above measures; this may include internal and external quality assurance reports, lesson observations, learner and employer feedback, programme reviews and improvement plans, staff CPD records.
  - iii. Validating the quality data received by implementing quality checks and procedures across the subcontracted provision, including lesson observations and quality check visits carried out by subject specialist staff, employer and learner feedback surveys and interviews with subcontractor staff.
- 4.4 The College will further contribute to quality assurance by:

- i. Ensuring that subcontractors are included in the College's quality processes and given access to College systems, such as How2's.
- ii. Providing subcontractors with a key contact at the College for any issues relating to the contract delivery.
- iii. Holding regular contract review meetings with subcontractors to performance manage quality and to mitigate any risks related to the provision. The contract reviews will be followed by developmental action plans that build the capacity of the provider to offer the best services to learners.
- iv. Working with subcontractors to respond to the employer and student feedback to improve experience.
- v. Identifying and sharing the best practise to improve learners' experience.
- vi. Sharing resources and providing learner access to College facilities, including online learning resources.
- vii. Providing staff development opportunities for subcontractor staff.
- viii. Performance assessment of activities such as teaching, learning and assessment. Providing feedback to assist with improvement where applicable.
- ix. Surveys are carried out with both employers and learners to ascertain quality of teaching, learning and assessment, the induction process, knowledge and skills of teaching staff and overall satisfaction. This is collated in a report and feedback disseminated.

## **5. Fees and Charges**

- 5.1 The fees charged by the College shall be agreed in the contract between the parties and shall be determined by a number of factors including the level of support a subcontractor requires in relation to the management, administration and quality obligations. These will be agreed prior to contract award, along with how the College will determine each cost is reasonable and proportionate to the delivery of the subcontractors teaching and learning and how each cost contributes to delivering high quality learning. The costs will detail specific costs for managing them, specific costs for quality monitoring and specific costs for any other activities. See Appendix 1 for example breakdown of costs.
- 5.2 The College deducts a fee from the Funding Agency rate based on the funding income received.
- 5.3 The core fee is calculated to cover costs of subcontracted delivery such as:
  - i. designated contact for subcontracted delivery;
  - ii. dealing with partner queries;
  - iii. advice and support related to national agencies and funding bodies;
  - iv. preparation of the contract agreement;
  - v. collecting and updating due diligence;
  - vi. performance management and contract review meetings;
  - vii. paperwork templates for student enrolments;
  - viii. paperwork checks and audit compliance;
  - ix. monitoring of learner progress, including travel to subcontractor delivery premises, announced and unannounced visits and learner surveys;
  - x. quality and compliance monitoring;
  - xi. coordinating self-assessment processes;
  - xii. registration and certification of learners, where applicable;

- xiii. administration support to process the data;
- xiv. data submission via the College's Individual Learner Record (ILR);
- xv. managing additional schemes related to provision, where applicable ;
- xvi. management of funding, finances and reconciliation;
- xvii. preparation and processing of payments;
- xviii. monthly payment information with transparent calculations to detail both the funding claimed by the College and the payment passed to the subcontractor;
- xix. any intervention costs;
- xx. associated commercial and operational risk, including External audit of subcontracted provision.

5.4 The above costs will be based on covering the College costs, including those attributed to the Contracts Team, Finance Team, Senior Leadership and Executive Team and the designated Quality Manager.

An approximation to cover these costs is 15% of the relevant contract value;

- i. 100% of all additional costs, with a 5% administration charge;
- ii. 100% of all intervention costs, with a 10% administration charge, although the nature of these costs is difficult to predict, and might only be applicable to future contracts, if any.

5.5 In addition a 5% top-slice shall be applied as a minimum to cover the inherent risk of working through partners, noting that any failure of the partner will have to be covered and paid for by the College. This percentage may be increased as follows:

- i. Training provider is new to the college; up to +5%.
- ii. Training provider has poor financial health, as assessed by the College; up to +5%.<sup>1</sup>
- iii. College has previous quality concerns; up to +5%.<sup>1</sup>
- iv. The nature of the learning or training is distant, complex, or considered novel; percentage to be assessed on a case by case basis.<sup>1</sup>

5.6 It is likely that in practice the minimum level of fee will be 20%, but that 25% and 30% might also be appropriate. For the sake of clarity it is likely that the eventual % will be set on a 5% interval basis.

5.7 Sub-contractors shall be initially appointed at the start of each year through the College's Framework. Performance by sub-contractors against their contracts shall be reported in each month's management accounts, including any qualitative assessment as might be warranted.

5.8 Further funding may be retained to cover the cost to the College of any additional support that the College deems necessary to ensure the quality of teaching and learning and the achievement rates of any subcontracted provision. Additional support will be negotiated with the subcontractor.

#### 5.9 **Payment Terms**

5.9.1 Payments will only be made to the sub-contractor once the College has received the funding from the Funding Agency or its successor funding body.

5.9.2 Start payments are subject to a minimum stay, dependent on the number of threshold days. No start payment will be made until after the minimum stay period.

5.9.3 The College will calculate the amount payable to the sub-contractor each month as follows:

- i. Following validation of the evidence in the ILR return, the College will make the appropriate payment to the subcontractor based on the level of income received from the Funding Agency in that month multiplied by the percentage agreed in the contract.

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<sup>1</sup> Not that the College would normally contract in such circumstances

- ii. The subcontractor will be notified of the payment and will invoice the College for that amount.
- iii. The College will make payment to the subcontractor within 30 days of receiving a valid claim for payment.
- iv. Any anomalies that arise following payment will be subject to reconciliation at a later invoice date.

5.9.4 All subcontractors are set up as suppliers on the College’s finance systems. The payment is made to the Subcontractor via BACS.

## 5.10 Transparency

5.10.1 The College will publish data on the actual level of funding paid and retained for each of the subcontractors in each contractual year. This data will be sent to the ESFA, and devolved authorities using a template that they have supplied, they will then publish this on their website.

5.10.2 As a minimum, the following will be included in the published supply-chain fees and charges:

- i. name of the subcontractor;
- ii. UKPRN number of the subcontractor;
- iii. contract start and end date;
- iv. type of provision (for example, 16-18 Apprenticeships, 19+ Apprenticeships, classroom learning, workplace learning);
- v. funding received from the funding agencies to the College for provision delivered by the subcontractor in that academic year;
- vi. funding the College has paid to the subcontractor for provision delivered in that academic year;
- vii. funding the College have retained in relation to each subcontractor for that academic year;
- viii. if appropriate, funding subcontractors have paid to the College for services or support the College have provided in connection with the subcontracted provision.
- ix. The College will publish this information on fees and charges alongside the Subcontracting Policy to allow all supply-chain fees and charges information to be viewed in context.

## 6. Implementation and Review

6.1 This Policy will be reviewed in each summer term, annually and updated as required to coincide with the Funding Rules. It will be published on the NWSLC website. The Policy is available for current and potential subcontractors to view on the websites.

6.2 All subcontractors are requested to read the Policy as part of due diligence for subcontracting arrangements with the College.

### Appendix 1: Example Costs

Service Provided	Specific Cost	Reason why cost is reasonable and proportionate to the delivery of the subcontracted
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		<b>teaching or learning and how each cost contributes to delivering high quality learning</b>
Contract Management – The College provides a Contract Manager and Contract Management Team to manage the relationship and provide guidance on strategic direction	7.5%	To ensure regular communication and timely sharing of information. Reviewing Proposal and profile. Due Diligence. Agreeing Contract and Monitoring contract. Co-ordinating learner feedback. Subcontractor meetings, including travel.
Quality – The College provides a Quality Lead to ensure quality of the subcontractor's delivery meet the needs and expectations of learners and to support the continuous improvement of the provision. Includes updates and checks carried out by the Safeguarding Lead or Deputy for the college.	8.5%	CPD Updates including Safeguarding and Prevent. Spot check, observations, learner voice, quality monitoring and provide a development plan. The checks include whether the learners exist and are eligible.
Finance	1%	Review of ILR Data, drafting payments, making payments
Provider Network Meeting	1%	Sharing of best practice, providing updates, sharing of College Resources
MIS	2%	Providing administration to audit check and process all learner data and files. Processing enrolments, achievements and withdrawals. Data returns, DSAT's and funding and monitoring reports.