

Subcontracting Policy 2022/23

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1 Introduction

This policy statement, which is reviewed annually, outlines Bishop Auckland College's rationale for sub-contracting with partners for the delivery of education and training. It also describes the College's approach to the selection of suitable partners and how the College will manage and monitor sub-contracted provision to ensure the delivery of high quality education and training. The College will not undertake Sub-contracting to meet short term funding objectives

2 Policy Statement

2.1 The policy is now a mandatory requirement that must be in place prior to participating in any sub-contracting activity from 1 August 2020. The content of this policy has been developed in line with AoC/AELP Common Accord, the ESFA Funding rules and in accordance with the College's financial regulations, and the LSIS Supply Chain Management document.

2.2 The Education Skills Funding Agency defines a sub-contractor as an organisation that is engaged in a contractual and legally binding arrangement with a lead provider to deliver provision ultimately funded by the Education Skills Funding Agency. This policy focuses on 'provision sub-contracting' although the same principles would apply to all sub-contracted education and training provision. 'Provision sub-contracting' is defined as where we sub-contract the delivery of full programmes, frameworks or standards.

2.3 The College has in the past worked with select sub-contractors and partners to deliver high quality teaching and learning. This sub-contracted and partnership provision has included, adult education provision, and learner responsive delivery to adult students in a variety of settings.

2.4 As a result of funding changes and an anticipated increase in the proportion of our curriculum that is delivered directly, the College will continue to review the scale of its sub-contracted provision in 2021/22. Because of this, the College will priorities the engagement of sub-contractors that:

- Can demonstrate consistent delivery of the highest quality teaching and learning
- Can facilitate a high level of progression into employment or higher learning for our students. (We are particularly keen to work with sub-contractors that are able to deliver student progression onto mainstream further and higher education courses at the College)

- Are financially secure and can enter into a sustainable relationship with the College
- Have or are committed to adopting robust quality assurance processes that complement those in place at the College.

2.5 The College makes a conscious decision between sub-contractors and delivery partners although our relationships with both share many common features. However, our partnerships are typically:

- Long term. Partnership agreements are expected to be maintained and developed for a number of years, whereas as sub-contractors will only be engaged for a maximum of one year at a time
- Of strategic value to the College and the local region. In some cases the College may decide to engage in partnership delivery that offers little or no financial benefit but confers a significant reputational or other advantage.

2.6 Our sub-contracted and partnership delivery is overseen by Governors through the Resources Committee. Governors will receive a regular report on the scale and mix of our sub-contracted provision through the monthly management accounts. The College has commissioned Audit One to review its management and governance of sub-contracted provision in 2022, and where appropriate will use the findings of this exercise to further improve the effectiveness of our management systems and controls.

2.7 The College has sought to ensure sub-contractors and delivery partners are fully engaged with our teaching and learning quality assurance processes. In 2021/22, our sub-contracted provision is subject to lesson observation in the same way as our directly delivered programmes of study. The College will seek to ensure that where appropriate, sub-contractors and delivery partners adopt our approach to self-assessment and quality improvement in 2021/22.

3 Scope

3.1 The policy applies to all supply chain activity supported with funds supplied by the Education Skills Funding Agency or any successor organisations.

4 Overarching Principle

- The College will use its supply chains to optimise the impact and effectiveness of service delivery to the end user. The College will therefore ensure that:
- Supply chain 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)
- 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
- 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
- Where disputes between supply chain partners cannot be resolved through mutually agreed internal resolution procedures, the College will submit 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 in accordance with the Overarching Principle.

5. Definition of Sub-Contracting

5.1 What is a Lead Provider?

A lead provider is a college, training organisation or employer that has a direct contractual relationship with the ESFA. In the case of this document, Bishop Auckland n College is the lead provider.

5.2 What is a Sub-Contractor?

A sub-contractor is a separate legal entity that has an agreement with the College to deliver any element of the education and training funded by the Education Skills Funding Agency or through Advanced Learning Loans. Sub-contractors may be informally called partners in the sector. However, for ESFA purposes, they are classified as sub-contractors.

6 Rationale for Sub-Contracting

6.1 The College has a strategic aim to minimise the level of sub-contracting entered into. The College aims to use its funding allocations to support our local students, employers and communities through direct delivery. Minimising levels of subcontracting also reduces the exposure to risk of poor performance by other organisations.

6.2 The College will in the first instance consider direct delivery. However, the College recognises the benefits that effective sub-contracting can bring in extending the range and accessibility of provision for students and employers and will consider sub-contracting in the following circumstances:

- Where our existing employers or students require additional provision which is beyond our existing scope or capacity
- Where subcontracting will allow us to meet short term needs of students or employers without exposing the college to the risks and entry and exit costs of setting up new provision
- Where sub-contracting will allow us to capacity-build in new sectors or territories to allow us to move to a position of direct delivery or to grow income such as Apprenticeship funding
- Fill in the gaps in niche or expert provision or to provide better access to training facilities, which the college would not be able to adequately resource.
- Where the due diligence process shows the selected provider to be of high quality and low risk to the college.
- Enhance the opportunities available for young people and adults.
- Support better geographical access for learners
- Offer an entry point for disadvantaged groups.

7 Quality Assurance

7.1 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.

7.2 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 supply chain, for example through the Self-Assessment Report process.

- 7.3 As a minimum the College will carry out the following Quality Assurance measures with sub-contractors:
- Desk top checks and due diligence visit for new providers
 - Annual due diligence review for existing providers
 - 3 Quality Assurance visits per year, of which at least 1 will be a short-notice visit, and will include face to face interviews with students and staff. Visits will be announced and unannounced
 - 3 sample file checks – at least one will be a short-notice sample
 - Checks to ensure learner eligibility and existence
 - Observations of advice & guidance, assessment and teaching and learning practise.

- 7.4 The College will provide a programme for each visit as follows:
- Standard visit agenda
 - Short Notice visit agenda
 - Quarterly contract management meetings, with the Head of Apprenticeship Development. These meetings may coincide with Quality Assurance visits
 - Annual survey of students
 - Annual survey of employers (if applicable)
 - Annual audit of MIS data including enrolment forms and attendance records
 - Annual review of learner documents including tracking records, reviews and

ILPs

- Quarterly review of the sub-contractor success rates, self-assessment process and Quality Improvement Plan.

- 7.5 The College may require the sub-contractor to undergo the following quality improvement measures, at a cost to the sub-contractor in accordance with the College's published fees:
- Additional standard or short notice visits
 - Additional survey of students or employer views
 - Lesson or assessor observations
 - Staff CPD
 - Consultancy from the College or other external consultant.

8 Payments to Sub-Contractors

- 8.1 The College will forward the sub-contractor the ESFA Funding Report for the preceding month's activity before the 16th of the month together with a purchase order. The sub-contractor will submit an invoice for the agreed % of the funding value as per the directions on the purchase order. The College will make payments to sub-contractors within 30 days of receiving a valid claim for payment that has been submitted in accordance with the terms of the individual sub-contractor agreement.

9 Publication of Information Relating to Sub-Contracting

- 9.1 In compliance with Education Skills Funding Agency and other agency funding rules, the College will publish its sub-contracting fees and charges policy and actual end-of-year sub-contracting fees and charges on its website before the start of each academic year (and in the case of actual end of year data, as required by ESFA). This will only relate to 'provision sub-contracting' i.e. sub-contracted delivery of full programmes or frameworks.
- 9.2 The College will ensure all actual and potential sub-contractors have sight of this policy and any other relevant documents. The Fees and Charges Table includes:
- The typical percentage range of fees retained to manage sub-contractors, and how this range is calculated
 - The rationale used to determine the level of fee retained through each sub-contract is a risk based approach

- 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
- Type of customers to be engaged
- Type of provision to be undertaken
- Contract duration
- The risk bands will be used to allocate college charges. Risk factors are given a score so that each sub-contractor is aware of why they are in a particular band, this process will be used to give sub-contractors an incentive to improve and thus reduce the risk band that they fall in. For example, higher risk sub-contractors will be allocated less funding but receive more monitoring and support
- Payment terms between the college and sub-contractors – timing of payments in relation to delivering provision and timescale for paying invoices and claims for funding received
- The support sub-contractors will receive in return for the fees charged.

10 Communication

- 10.1 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

11 Fees and Charges

- 11.1 The standard college management fee is 15/25% of all funding drawn down against the provision to be delivered. This figure 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-contracted partner.

- 11.2 Further charges to cover additional costs may be added to the base 15/20% fee to cover the cost to the College of any additional support that the College deems necessary to ensure the quality of teaching and learning, the overall learner experience and the success rates of any sub-contracted provision. Additional cost is determined using a weighted table of risk factors. The table is available to all actual and potential sub-contractors. It is designed to ensure that the cost of any additional support provided to a sub-contractor is covered through the funding retained. Additional costs will be re-calculated and negotiated each year at contract renewal, giving sub-contractors the opportunity to reduce their fees through continuous improvement. This approach will allow the College to focus support where and when it is needed.

12 Additional Support for Sub-Contractors

- 12.1 The precise additional support given to each sub-contractor will be negotiated with that sub-contractor, but will be based on a 'risk band' approach and may include:
- Additional site visits
 - Additional lesson observation
 - Additional tutor support
 - More rigorous verification.

13 How We Select and Appoint our Sub-Contractors

- 13.1 To subcontract with the college all sub-contractors with subcontracts totaling £100,000 and above must be entered on the Register and in the case of apprenticeships, the Register of Apprenticeship Training Providers (RoATP). All lead providers and subcontractors must register on the UK Register of Learning Providers (UKRLP) annually and hold a valid UKPRN

to be eligible to receive funding or a Loans Facility, either directly or through a subcontracting arrangement.

All partners go through a rigorous and robust due diligence process and in selecting our partner providers, we will consider the following:

- Reputation – providers may be referred to us by employers or other FE Colleges
- Specialism – providers may offer niche provision where there are few alternatives
- Geographic location – where possible we will support local partners
- Quality measures – based on a range of measures including Ofsted rating, success rates, track record etc.
- Responsiveness – how readily the provider can meet the needs of our students and employers
- Safeguarding and Prevent Duty agendas – how the sub-contractor conforms to these requirements and ensures all students are protected and safe
- Modern Slavery – the College is committed to ensuring that there is no Modern Slavery within its own business and supply chain. All sub-contractors will be expected to comply with the College's Modern Slavery Policy which is currently in development
- Potential conflicts of interest
- Disclosure and Barring Service (DBS) checks on all subcontracting staff related to the contract
- If the subcontractor is listed on the Register of Training Organisation (RoTO) and/or the Register of Apprenticeship Training Providers (RoATP) and the total value of sub-contracts that they hold
- Lack of a track record, such as providers who are new organisations, or who offer new or immature provision will not necessarily be a barrier to sub-contracting
- However, the quality assurance measures and associated costs will reflect the additional risks of new provision. Following initial selection, the College will undertake a desk-top due diligence check of potential partners. This will be followed by a due diligence visit to the delivery premises prior to contracts being issued
- Existing sub-contractor partners will undergo an annual due diligence review.

14 Clarity of Roles and Responsibilities

14.1 The sub-contractor is responsible for:

- Providing information requested by the College as part of the Due Diligence process
- Providing the requested documentation to enable the College to make a judgment as to the suitability to enter into a sub-contracted arrangement. The documentation must be updated regularly and/or at the College's request for the duration of the contract
- Ensuring students are eligible for funding in accordance with ESFA Funding Rules (and, where appropriate, European Social Fund (ESF) funding rules).
- Informing the College of any changes of ownership of the organisation, management structure, loss of centre accreditation and/or direct claim status
- Providing details of any accidents or dangerous occurrences affecting students or the learning environment
- Providing details of any Safeguarding or Prevent issues
- Providing details of entry onto the RoTO and/or RoTAP and maintaining its registration
- Providing an annual Self-Assessment Report
- Submission of learner enrolments, registers and completion of documentary evidence in a timely manner and with minimal errors or omissions
- All students provided with education and training under a sub-contract with the College remain the responsibility of the College, in accordance with the ESFA Funding Rules. This means that the College must monitor and manage the risk around quality of provision, learner experience, success rates, audit and any failure to adhere to contractual

requirements by the sub-contractor. This is a significant factor in our sub-contracting strategy

- All Providers wishing to sub-contract to the College should fully familiarise themselves with the ESFA Funding Rules (and, where appropriate, ESF funding rules) and ensure their systems and processes enable full compliance. The College will carry out quality-assurance checks (outlined elsewhere in this policy) and sample file checks to ensure that sub-contractors are complying with the Funding Rules
- Sub-contractors must inform & encourage students and employers benefitting from this contractual arrangement of the requirement to participate in the College Quality Monitoring activities and surveys when required. They may also be required to participate in an OFSTED inspection as and when the College is subject to one, and should be made aware of this at the outset
- Should either party need to withdraw from this contract, the sub-contractor must agree to co-operate with the College to ensure there is continuity of learning for the students. All learner details, files, paperwork and or electronic records should be passed to the College at the earliest possible convenience for the purposes of finding and supporting suitable, high quality alternative provision
- Sub-contractors must supply the College with the required ILR data in a prompt manner, as agreed with your College Contract Manager. All information must be fully completed and checked before sending to us
- The College and, if necessary, the ESFA (or their nominated representatives) must be given reasonable access to your premises and your documentation for the purposes of quality assuring the training delivery falling under the scope of this sub-contract
- It is the sub-contractors responsibility to provide suitably qualified and competent staff who have been DBS checked, for the delivery of the qualifications and training under this sub-contract arrangement. The College will require evidence of DBS checks, staff qualifications and experience
- Sub-contractors must inform the College if they discover any irregular financial or delivery activity in their organisation including:
 - Non delivery of training when funds have been paid
 - Sanctions imposed by an Awarding Body
 - An inadequate Ofsted grade
 - Complaints or allegations by students, staff or other relevant parties
 - Allegations of fraud
- Sub-contractors must not use any funding earned under this sub-contract agreement to make bids or claims from any European funding on their own behalf or on behalf of the College
- There can be no 2nd level sub-contracting, under any circumstances under the terms of this sub-contract. All delivery must be carried out by the sub-contractor's own employed competent staff.

15 **Intervention Process**

To enable the college to take corrective action where a subcontractor is assessed as being of risk. The outcome of any intervention is to enable the effective completion of any subcontracted learners.

Intervention is required if a subcontractor:

- Fails to provide suitable evidence of learning and progress in a visit to support the funding claim.
- Fails to submit evidence as part of an audit or investigation commissioned by the college
- Gives cause for concern regarding a breakdown of trust.

- Fails to comply with reasonable requests for information.
- Demonstrates poor or declining achievement rates based on learner progress updates.

In any of the circumstances above the subcontractor will be deemed to be of HIGH RISK and a Notice of Concern will be issued.

Stage 1 – RISK ASSESSMENT

During this stage no further payments will be made to the subcontractor. The subcontractor will be required to provide a sample of evidence to support learning, visit or review activity for the learners selected. The sample may range from 25% to 100%.

Outcome	Evidenced by	Intervention
Evidence satisfies the requirements of the ESFA funding Guidance	Sampled evidence is 100% compliant with guidance	Funding Reinstated – Subcontractor Intervention Ceases
Evidence does not fully meet the requirements of the ESFA funding guidance	Sampled learner evidence is not fully compliant	Implement Stage 2 - Intervention Action
Evidence is wholly unsatisfactory in meeting the ESFA funding guidance	Sampled evidenced is non-compliant	Implement Stage 3 – Termination of Contract

Stage 2 - INTERVENTION ACTION

Bishop Auckland College will work with the subcontractor on a range of support measures. The funding proportion paid to the subcontractor will reduce by a further 15% to cover the costs of such intervention. The support measures will be agreed with the subcontractor and may include:

- Increased monitoring and audit activity
- Increased support visits
- Further audits to check that learning/visits are taking place.

Stage 3 – TERMINATION OF CONTRACT

In the event that the evidence of learning provided by a subcontractor does not provide confirmation that learners are actively engaged in learning, the College will make arrangements to terminate this contract as per section 10 of this Subcontracting Delivery Agreement. Learners currently enrolled will remain the responsibility of the College and will continue with their learning.

Contingency for Termination of Contract

The College will enable the completion of learners where a subcontractor's contract has been terminated. The college will assess the best option, from those listed below, for completing the learners:

- Deliver the remaining programme as a prime provider using college employees or self-employed consultants.
- Seek a suitable alternative partner to deliver the reaming programme as a new or extended subcontracting arrangement.

The college will assess the best method based on variables such as employer location, learner location, the proportion of the programme left to complete.

16 Review of Policy

16.1 This policy will be reviewed in each summer term and updated as required.

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