

# Subcontracting Guide 2022-23

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Pat Brennan-Barrett

Principal

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# 1. INTRODUCTION

- 1.1. This guide gives an overview of each section of our Subcontract Management Framework. Northampton College is committed to effective partnership working with stakeholders in pursuit of our vision, mission and values. Appropriate sub-contracting can help support the delivery of the College's objectives, within the parameters set by the College's funding bodies.
- 1.2. The College may seek sub-contracting partners where there is a specific need or strategic objective that can be advanced through a sub-contracting arrangement. All partners of Northampton College must contribute to, and act in accordance with, our vision, mission and values.

# 2. RESPONSIBILITY

Deputy Principal Finance & Corporate Affairs

# 3. SCOPE

- 3.1 This policy relates to all subcontracting arrangements within Northampton College supported by funding from the Education and Skills Funding Agency (ESFA) or any successor organisations.
- 3.2 We define a subcontractor as a separate legal entity that has an agreement with Northampton College to deliver any element of the education and training for which funding is received. A separate legal entity includes any companies in our group, other associated companies, and sole traders. It also includes individuals who are self-employed or supplied by an employment agency unless those individuals are working under our direction and control.
- 3.3 Northampton College remains responsible for all sub-contracted provision and will ensure learners supported through subcontracting arrangements know about the College and the subcontractor's roles and responsibilities.
- 3.4 This guide encompasses and replaces the previous Sub-contracting and Supply Chain Fees and Charges policies.

# 4. POLICY STATEMENT

- 4.1 The College recognises the potential value of subcontracting and the importance of ensuring subcontracting arrangements adhere to funding body requirements. The College may utilise sub-contracts where the rationale is clearly aligned to the College's strategy, and where it can optimise the quality, impact and effectiveness of service delivery. The College will ensure that:
  - a) All sub-contracted delivery complies with the ESFA published sub-contractor rules, performance management and quality assurance standards.
  - b) The College undertakes fair and transparent selection of subcontractors and conducts robust due diligence to ensure that provision is high quality and value for money is safeguarded and demonstrated.
  - c) The College will have appropriate and robust contract management, quality assurance and payment mechanisms to ensure high quality provision and funding compliance.
  - d) Subcontracting arrangements are embedded in College governance and risk management approaches.

## 5. RATIONALE FOR SUB-CONTRACTING

5.1 The College's Strategic Plan sets out our priorities and ambitions for the coming years. Our curriculum offer supports the achievement of our Strategic Plan. The College will only sub-contract where such an arrangement meets a specific need or advances a strategic objective and is in line with funding guidance i.e., to meet one or more of the following aims:

- Enhance the opportunities available to learners.
- Fill gaps in niche or expert provision or provide better access to facilities.
- Support better geographical access for learners.
- Support an entry point for disadvantaged groups.
- Support individuals who share protected characteristics, where there might otherwise be gaps.

5.2 The College will not sub-contract provision purely to meet funding obligations and recognises that funding body direction is to reduce the volume of sub-contracting activity year-on-year.

5.3 For 2022/23, the College will undertake sub-contracting through the Adult Education Budget only.

5.4 The College's priority for sub-contracting is to enhance opportunities and access for learners through maintaining distance learning provision for adult students at scale, thus enabling learners who may not otherwise be able to access college or funded provision to do so. This supports the College's strategy to provide education and training which meets the needs of students and employers. Within our subcontracting portfolio, the curriculum priority will continue to be Health and Social Care, which is a national and regional priority already served by the College's existing provision. These priorities will:

- Enhance the training opportunities available to all students, but particularly adult students;
- Maintain the College's portfolio, providing distance provision at a scale not available to the College directly; and
- Enhance access by providing training that can be accessed and completed by students whenever and wherever is most convenient to them; and
- Enhance access to specific training for staff in the Health & Social Care sector; who traditionally find it difficult to access training.

## 6 PROCUREMENT & SELECTION

6.1 The College considers itself a contracting authority under the 2015 Public Contract Regulations (PCR), and its sub-contracting activity constitutes 'educational services' under those Regulations.

6.2 Any subcontractors should have the capacity and reach to meet both volume and quality expectations in line with this policy and funding body guidance. The procurement process for each subcontract will ensure that appropriate financial, quality and corporate due diligence is obtained prior to contract award. We will also apply the criteria in the ESFA "Funding higher risk organisations and subcontractors" guidance, setting out when a provider is considered high risk.

6.3 The College will not award a contract to a legal entity if:

- it has an above average risk warning from a credit agency;
- it has passed a resolution (or the court has made an order) to wind up or liquidate the company, or administrators have been appointed, or
- its statutory accounts are overdue; or
- the College does not have assurance that extremist organisations are not funded in connection with the sub-contractor.

6.4 Where the College's envisaged contract value is anticipated to exceed the threshold in the PCR, a procurement exercise will be undertaken to ensure compliance. The College will ensure that subcontractor(s) are selected fairly, transparently and without discrimination and potential subcontractors have sufficient capacity, quality and business standing to deliver the provision that is being subcontracted.

6.5 The College is not undertaking distance or whole programme subcontracting for 16-19 year olds. The ESFA will be notified about any circumstances which might lead to an actual or perceived conflict of interest.

6.6 Contracts will not be agreed, without written ESFA permission, to any institution or organisation which is not permitted to recruit 16- to 18-year-old students and/or 19 to 25 year old high needs students (HNS), for example an 11 to 16 school. In accordance with the College's agreement with the ESFA no agreement will be entered into for brokerage. No artificial distinctions or distortions should be made when describing delivery arrangements to avoid the application of any ESFA rules.

6.7 Subcontracts for the delivery of ESFA funded provision will only be awarded to legal entities. If the legal entity is a registered company, it must be recorded as 'active' on the Companies House database. Subcontractors for contracts valued over £100,000 must be registered on the UK Register of Learning Providers (UKRLP) and hold a valid UK Provider Reference Number (UKPRN) to be eligible to receive ESFA funding, either directly or through a subcontracting arrangement. We will obtain this information from each proposed subcontractor and refer to the latest published List of Declared Subcontractors and the Register.

6.8 No subcontracts will be agreed where this would require the College to subcontract ESFA funding to a second level of subcontractor.

## 7 CONTRACT MANAGEMENT AND ADMINISTRATION

7.1 Key roles and responsibilities for the management of sub-contractors are set out in the table below:

| Name                | Job Title  | Roles and Responsibilities  |
|---------------------|--|---|
| Pat Brennan Barrett | Principal  | Chief Executive   |
| Patrick Leavey      | Deputy Principal                                 | Overall responsibility for all College educational provision                    |
| Julian Wood         | Deputy Principal Finance & Corporate Affairs     | Executive Team Lead for Subcontracting – Budget Holder and SRO/Contract Manager |
| Carol Meadows       | Director of Management Information Services      | Funding, Documentation, Compliance and Data Protection Assurance                |
| Jenny Thorpe        | Assistant Principal Teaching, Learning & Quality | Quality Monitoring and Assurance  |

Other College staff work under direction in support of the senior staff above. The SRO acts as Contract Manager.

7.2 Prior to learning commencing, the College will have in place a legally binding contract with each subcontractor and will make sure that the terms of the subcontracts allow us to:

- monitor the subcontractor's activity;
- have control over our subcontractors, and
- monitor the quality of education and training provided by our subcontractors.

7.3 The College will ensure subcontractors:

- adhere to or exceed the minimum provisions with ESFA' subcontracting rules;
- provide us with ILR data so our data returns accurately reflect our subcontractor's delivery information;
- give the ESFA and any other person nominated by them, access to their premises and all documents relating to ESFA funded provision;
- give us sufficient evidence to allow us to:

- assess their performance against Ofsted's Education Inspection Framework
- incorporate the evidence they provide into our self-assessment report, and
- guide the judgements and grades within our self-assessment report
- always have suitably qualified staff available to provide the education and training funded;
- co-operate with the College to make sure that there is continuity of learning if the subcontract ends for any reason;
- tell us if evidence of any irregular financial or delivery activity arises. Irregular activity could include, but is not limited to:
  - non-delivery of training when funds have been paid
  - sanctions imposed on the subcontractor by an awarding organisation
  - an inadequate Ofsted grade
  - complaints or allegations by learners, people working for the subcontractor or other relevant parties, and
  - allegations of fraud
- are bound by European Social Fund (ESF) clauses from our funding agreement being then included in the subcontract, even if the provision being subcontracted is not funded by the ESF;
- do not use funding to make bids for, or claims from, any European funding on their own behalf or on our behalf; and
- do not use payments made as match funding for ESF co-financing projects.

7.4 In agreement with both parties, variations to the contract may be issued during the contract period. The variation may relate to, for example:

- Changes in the management fee dependent on the level of support required.
- Changes to the volumes of learners and funding.
- Changes to the range and scope of provision delivered by the Subcontractor

7.5 Overarching responsibility for the management of administration resides with the Deputy Principal Finance & Corporate Affairs.

7.6 A Subcontracting Group consisting of the SRO, the Assistant Principal TLQ and the Director of MIS, together with other Quality and Finance representatives will meet at least termly, aligned to Sub-contractor Monitoring meetings to consider:

- a review of each subcontractor's current performance;
- quality/contract management;
- health and safety visits and confirmation of funding payments.

Any outstanding requirements in relation to safeguarding training or submission of documentation are also discussed. Minutes and actions will be recorded.

7.7 Subcontractor data including enrolments, retention, pass and achievement rates are reported within College management information systems and reviewed by MIS and quality teams and the Contract Manager.

## **8 RELATIONSHIP AND PERFORMANCE MANAGEMENT**

8.1 The SRO will provide continuity of relationship management and subcontractors will also be expected to prioritise continuity of contract management, where relevant, to ensure detailed knowledge of the contract is built and retained and relationships are built between College and subcontractor staff.

8.2 Regular structured and informal communication routes between the SRO/Contract Manager, key college staff and subcontractors are important to ensure effective relationship management. Contract meetings take place at least termly to monitor the performance of the contract. Key College staff are introduced to subcontractors to enable timely, appropriate responses to enquiries, queries, and minor problems.

8.3 Subcontracted partners will be expected to meet the College's quality assurance standards. The quality of the provision is monitored and managed through existing quality improvement processes with the College's Self-Assessment Report/Quality Improvement Plan process ensuring continuous improvement. The subcontract will provide for quality assurance including:

- visiting all or any site(s) and view operations relating to the provision;
- the examination, audit or copying of documentation and records relating to the contract;
- co-operation with all audit monitoring or inspection requirements required by the Funding Body or the College; and
- access to training and assessment sessions for the purpose of observing teaching and learning, both announced and unannounced.

The College will maintain a Subcontract Quality Strategy for each subcontract detailing the Quality Assurance approach. The strategy will include regular Monitoring meetings between College and subcontractor staff which shall be minuted and recorded.

8.4 An appropriate basket of performance measures will be defined in the contract and will generally cover the following areas:

- Profile of learner starts
- Qualification Achievement Rate
- Quality Compliance, for example observed Teaching, Learning & Assessment
- Learner Progress
- Audit Compliance
- Customer Satisfaction

Specific measures will be determined for each subcontract. A proportion (generally 5 per cent) of contract value will be retained until the end of the contract and will be released once performance against targets and any audit activities have been confirmed.

8.5 Where underperformance is identified, proportionate interventions will be introduced, with the subcontractor developing an action plan for improvement in dialogue with the College. Failure to provide an acceptable standard of training or compliance with contractual requirements, for example data security, will lead to more formal procedures, and may result in a subcontract being suspended or terminated.

## **9 PROVIDER DEVELOPMENT**

9.1 Improving provider performance and capability is important to developing the relationship between the College and subcontractors. The College's procurement strategy is expected to lead to relationships with mature partner organisations in which mutual learning can help enrich both organisations. Mutual development opportunities are expected, and the College's contribution to provider development will reflect the organisational maturity of chosen partners. As part of the subcontract arrangement, the College will consider a range of support opportunities including:

- providing annual contextualised Safeguarding Training for subcontractor staff;
- providing access to data reports to support understanding of retention, achievement and pass data;
- providing feedback on quality assurance activities to enable improvements to the quality of education;
- providing access to relevant CPD activities;
- providing advice and guidance on teaching, learning and assessment, learning support and welfare strategies and interventions as required;
- access to expertise, advice and support in relation to Safeguarding and Health and Safety; and
- joint working on process improvement and mutually beneficial future activities, as appropriate.

## 10 PAYMENTS, FEES AND CHARGES

- 10.1 Fees and payment arrangements will be documented in the subcontract and will include retention of funding to provide an incentive for full completion of the expected contract performance.
- 10.2 The College standard Management Fee is 20% which is applied to the actual funding earned by students on the programme being delivered as part of the sub-contract contract. Management fees can be increased if additional support is required. Any increase in fees will be discussed in advance and agreed in writing with subcontractors. The SRO must approve any contractual changes, and significant increases in contract values require Corporation approval.
- 10.3 The standard Management Fee reflects the cost to the College of support and other contract management activities in line with this policy and wider guidance and requirements, estimated as follows:

| Activity                                   | Estimated % Funding Value |
|--|---------------------------|
| Enrolments and maintenance of the ILR      | 8%                        |
| Contract management & Monitoring           | 4%                        |
| Quality Assurance & Improvement            | 4%                        |
| Due Diligence and Finance                  | 3%                        |
| Provider Development & access to expertise | 1%                        |

- 10.4 Payments are calculated and reconciled monthly once the College has received the Funding Report from the ESFA. The College will provide the Funding Report to subcontractors who are required to review for accuracy and completeness. Once validation is complete, subcontractors may then provide an invoice to the College for the value of the month detailed on the Funding Report minus the Management Fee.
- 10.5 On receipt of an undisputed invoice the College will make payment by BACS within 30 days.

## 11 RISK MANAGEMENT

- 11.1 The SRO is responsible for ensuring that risks associated with subcontracting are reflected in the College's overall Risk Management approach.
- 11.2 Specific risks relating to each subcontract will be identified and discussed through regular Monitoring Meetings and the College Subcontracting Group. Where serious risk is identified this will be escalated and reported including, where appropriate, to the Corporation.
- 11.3 Contractual terms will reflect data security and confidentiality, insurance and health and safety issues and, where relevant, subcontractors will be required to share documents to support due diligence and wider risk management.
- 11.4 Where a subcontractor is failing to provide appropriate information or deliver expected performance, intervention may be required. Intervention will follow the hierarchy set out below:
- *Formal Risk Assessment:* the College will seek evidence providing assurance of performance and/or contractual commitments. During this period, payments to the subcontractor may be suspended. Where assurance is provided, intervention will cease and payments resume. If assurance is insufficient, further action may be taken.
  - *Formal Intervention:* The College will undertake further work with the subcontractor on appropriate support measures. Such measures will be agreed with the subcontractor and may incorporate increased monitoring, support and audit activity in addition to agreed improvement measures. Under formal intervention, the College will retain an additional proportion of funding, reflecting additional costs to the College of the intervention activity.



- *Contract Termination*: If formal intervention does not provide sufficient evidence of progress and compliance with funding body requirements, the College may make arrangements to terminate, in line with the relevant contractual provision.

11.5 Where a subcontract is terminated, the College will enable completion of enrolled learners' activity. To facilitate completion, the College will consider options including college delivery of the remaining programme using college employees or consultants, and / or seeking a suitable alternative provider through a separate subcontracting arrangement.