

**Sub-contracting Tendering 2022/23**

**Introduction**

East Coast College has historically agreed sub-contracting delivery for niche provision with external providers. This provision has, in accordance with the ESFA guidance, been approved by the Corporation of the College.

The ESFA guidance for 2022/23 requires the College to carry out a tendering process prior to the allocation of sub-contracting contracts for the 2022/23 year. This applies to both the study programme and adult provision.

East Coast College has, through curriculum planning and an examination of the College’s ability to deliver and provide quality student outcomes, identified areas where is wishes to source external providers to support local (Suffolk and Norfolk) delivery.

**Tender Process**

The College is inviting potential providers of the provision listed below to participate in the tendering process. The process will involve the completion of the Invitation To Tender which can be found at Appendix 1 together with the Statement of Tender, see Appendix 2. The Conditions of Tender can be found at Appendix 3.

The College will judge each application against a scoring matrix, see Appendix 4. All providers whose tender has been successful will be notified within 10 days of the closing date of **29th April 2022**

The College’s Sub-contracting Policy 2022/23 can be found at Appendix 5 and the ESFA Sub-contracting Standard at Appendix 6. These documents should be read before completing the tender application form.

Note that the College will remain responsible for ongoing quality assurance activities and will charge a management fee, usually at 20% unless agreed otherwise.

**Provision to be Sub-contracted**

The College is seeking applications for sub-contracted provision for the following provision-

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Required provision** | **16-18 Learner numbers** | **AEB value** | **Justification** | **Specifics** |
| * Level 3 Performing Arts RQF. (432 hours vocational ) | 16 | N/A | * enhances the opportunities available for learners * fills gaps in niche or expert provision or provides better access to training facilities | The location should be able to deliver in the GY area of need and support students from the wider catchment. |
| * NEET inc high needs for those not ready to transition into FE who aren’t yet ready for mainstream College delivery | 40 max | N/A | * offers an entry point for disadvantaged groups; or * gives consideration of the impact on individuals with shared protected characteristics, where there might otherwise be gaps | ECC catchment area. This would be a fulltime study programme model of all required elements. |
| * 12 week programmes to support employability and pre apprenticeship models to 16-24 year olds | £24,221.94 | £9966.96 | * offers an entry point for disadvantaged groups; or * gives consideration of the impact on individuals with shared protected characteristics, where there might otherwise be gaps | Waveney and East Suffolk area |

**Appendix 1 – Invitation To Tender**

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| --- |
| **Q1 - Organisation Name** |
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| --- |
| **Q2 - Registered Address** |
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| --- |
| **Q3 – Companies House and/or Charity Commission Number and UK Provider Registration Number (UKPRN)** |
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| --- |
| **Q4 – Details of Affiliations / Registrations / Approvals** |
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| --- |
| **Q5 – Summary of Principal Activities (200 words max)** |
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| --- |
| **Q6 – Summary of Experience in Delivering Educational Activities (300 words max)** |
|  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Q7 – Retention and Achievement Rates (in region)** | | | |
|  | **Course** | **Retention (post 42 days)** | **Achievement %** |
| **2020/21** | Study programme |  |  |
| **2021/22 planned** | Study programme |  |  |
| **2020/21** | Adult provision |  |  |
| **2021/22 planned** | Adult provision |  |  |

|  |
| --- |
| **Q8 – Description of Known Progression (HE, Apprenticeships, Employment etc.) and Percentage of Positive Progression (300 words max)** |
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| --- |
| **Q9 – Summary of Quality Management and Improvement in FE Delivery (400 words max)** |
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| --- |
| **Q10 – Summary of Staff Experience and Qualifications (200 words max)** |
|  |

|  |
| --- |
| **Q11 – Summary of relevant physical resources and any relevant photos (200 words max)** |
|  |

|  |
| --- |
| **Q12– Provision to meet tender request (500 words max). Must include recruitment, quality delivery, student experience, delivery location considerations)**  **Please also state min/max group sizes that you are able to support and deliver high quality training to.** |
|  |

**Please provide the following documents with your Invitation to Tender:**

* Latest annual accounts
* Current insurance policies
* CVs and qualification evidence for staff
* Quality evidence from awarding bodies
* Signed Statement of Tender – Appendix 2
* 2 external references from professionals/ providers you have worked with, including quality delivery and outcomes.

**Appendix 2 – Statement of Tender 2022/23**

To: East Coast College

Dear Sirs

* + - 1. I/we have read the information provided in your Invitation to Tender and, subject to and upon the terms and conditions contained therein, I/we offer to supply the services described in the said tender documents in such manner as may be required.
      2. The prices quoted in this Tender are valid for acceptance for 90 days from the final day for submission of Tenders and I/we confirm that the terms of the Tender will remain binding upon me/us and may be accepted by you at any time before that date.
      3. Law: I/we agree that the construction, validity, performance and execution of any contract that may result from this Tender shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.
      4. I/we agree to bear all costs incurred by me/us in connection with the preparation and submission of this Tender and to bear any further costs incurred by me/us prior to the award of any contract.
      5. I/we agree that any other terms or conditions of the agreement or any general reservation which may be printed on any correspondence emanating from me/us in connection with this tender, shall not be applicable to this Tender or Contract.

\* Please delete as applicable

Signature:

Print Full Name:

Date:

In the capacity of:

*(Please state official position, e.g. Director, Partner, etc.)* being a person duly authorised to sign tenders on behalf of:

Organisation Name:

Address:

**Appendix 3 – Conditions of Tender 2022/23**

## Enquiries Concerning the Tender

All communications in connection with this Tender or the Invitation to Tender should be made via email to the Assistant Principal, Rachel Bunn:

[**r.bunn@eastcoast.ac.uk**](mailto:r.bunn@eastcoast.ac.uk)

Unless the query clearly contains the Tenderer’s intellectual property, the response by the College as well as the nature of the query will be notified to all Tenderers, without disclosing the name of the Tenderer who initiated the query.

1. **Independent Tender**

By submission of a Tender, the Tenderer warrants that:

(a)The prices in the Tender have been arrived at independently, without consultation, communication, agreement or understanding for the purpose of restricting competition, as to any matter relating to such prices, with any other Tenderer or with any competitor.

(b) Unless otherwise required by law, the prices which have been quoted in the Tender have not knowingly been disclosed by the tenderer, directly or indirectly, to any other Tenderer or competitor, nor will they be so disclosed.

(c) No attempt has been made or will be made by the Tenderer to induce any other person or firm to submit or not to submit a Tender for the purpose of restricting competition.

1. **Preparation of Tender**
   1. **Cost of Tender**

The College will not be responsible for any costs or expenses incurred by the Tenderer in connection with the preparation or delivery or in the evaluation of the Tender.

* 1. **Validity Period of Tender**

All details of the Tender, including prices and rates, are to remain valid to acceptance for 90 days from the tender delivery date.

1. **Delivery of Tender**
   1. **Number of Copies**

Please submit an electronic copy of the Invitation To Tender, including supporting documents, and the Statement of Tender by email by the delivery date and time.

* 1. **Delivery Date and Time**

The Tender must be received by 5.00pm on 18/04/2022

* 1. **Delivery Address**

Tenders should be sent by email to finance@eastcoast.ac.u

The words “Tender for Subcontracting 2022/23” should be the subject line for the email.

1. **Treatment of Tender**
   1. **East Coast College’s Discretion**

The College does not undertake to accept the lowest Tender, or part or all of any Tender, and the acknowledgement of receipt of any submitted Tender shall not constitute any actual or implied agreement between the College and the Tenderer. The College reserves the right to accept any part, all or none of any Tender or Tenderers at its sole discretion.

* 1. **Incomplete Tender**

Tenders may not be considered if the complete information called for is not given at the time of tendering.

* 1. **Results of Tendering**

The College will consider all tenders correctly submitted and will select one with a view to reaching a contractual agreement subject to clarification of any outstanding matters. When the final decision regarding the result of the Invitation to Tender has been taken, all Tenderers will be informed in writing whether or not they have been successful.

**Appendix 4 – Scoring Matrix 2022/23**

**Name**

|  |  |
| --- | --- |
| **Organisation Name** |  |
| **Organisation Address** |  |
| **Company Registration number** |  |
| **Confirmation of 3 years audited accounts** |  |

|  |  |  |  |
| --- | --- | --- | --- |
| ITT Question | 1 point | 2 point | 3 point |
| 4 - Affiliation /registrations |  | OFSTED, Vocational relevance / subject specific | RoTAP |
| 5 - Principal Activities | Non training/education | Training/ leisure courses | Education and training |
| 6 - Experience in education | Under 1 year | 1-2 years | 3+ years |
| 7 - Retention | Below 85%# | 86-90%# | 90 +%# |
| 7 - Pass | Below 85%# | 86-90%# | 90+%# |
| 8 - Progression post course completion | Positive progression 60% or below | 61-75% | 76+% |
| 9 - Quality Management | Basic quality policy | Evidence of student voice and lesson observations | Self assessment, quality improvement activity |
| 10 - Staff Experience^ | All staff have recent sector experience and qualifications | All staff have recent sector experience and qualifications  AND Training/ teaching level 4 qualifications or above | Recent sector experience and qualifications  AND Training/ teaching level 4 qualifications or above Assessor award  Internal verification |
| 11- Ability to offer the tender specifications  ( assessor may provide specific feedback on this aspect, but is not mandated in decision making) | Tender response was weak in terms of quality provision and student experience | Tender response was fair in terms of quality provision and student experience | Tender response was strong in terms of quality provision and student experience |

# - Average for 202/21 and 2021/22 planned

^ - Average for all staff declared

**Appendix 5 – Sub-contracting Policy 2022/23**

1. **Introduction and Purpose**

This Policy is a mandatory requirement that must be in place prior to participating in any sub-contracting activity. The Policy has been written in accordance with the Education Skills Funding Agency’s (ESFA) requirements as set out in the current Funding Rules

1. **Scope**

The Policy applies to all third party sub-contracted supply chain activity supported with funds supplied by the Education Skills Funding Agency or any successor organisations.

1. **Disclaimer**

East Coast College reserves the right to amend its sub-contracting arrangements at any time in accordance with the requirements of the funding bodies and the terms and conditions contained in its standard contract or sub-contracted provision.

1. **Overarching Principle**

The College will use its supply chains to optimise the impact and effectiveness of service delivery to learners. The College will, therefore, ensure that:

* Supply chain management activities comply with the principles of best practice in the skills sector.
* The College will at all times undertake fair and transparent procurement activities, conducting robust due diligence procedures on potential subcontractors to ensure the highest quality of learning delivery is made available, demonstrating value for money and a positive impact on the lives of learners
* 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
* Contract documents will require both parties to agree that the achievements of the sub-contracting 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.

1. **Rationale for Sub-contracting**

The College engages with sub-contractors in order to:

* Enhance the opportunities available to young people and adults
* Fill gaps in niche or expert provision, or provide better access to training facilities
* Support better geographical access for learners
* Offer an entry point for disadvantaged groups
* Provide consideration for the impact on individuals who share protected characteristics

Provision that meets one or more of the following criteria will be prioritised:

* It meets the needs of residents and employers of Great Yarmouth, Lowestoft and immediate regional adjacencies
* It supplements and does not duplicate the College’s curriculum offer
* It offers progression opportunities into the College

1. **Quality Assurance**

Sub-contracted activity is an important part of the College’s provision. The quality of the provision will be monitored and managed through the existing College Quality Assurance processes and procedures, as amended in order to fully encompass all sub- contracted activity.

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 subcontractors. This will be achieved through the sharing of effective practice across the supply chain.

Sub-contracted provision will only be supported with organisations which can demonstrate the actual achievement of, or the potential to rapidly achieve, good quality teaching and learning and success rates which achieve national averages. There is a robust due diligence process to support new and renewing contracts, and this includes financial audit and compliance checks, previous delivery models and outcomes and checks for staffing, health and safety and qualification compliance.

East Coast College ensures that its sub-contractors are included in the College’s quality systems and are audited and supported by the College to follow this process. Practices follow a planned quality assurance calendar in which actions include spot checks, register compliance, learner voice, lesson observations, and feedback of tutorials and feedback. Regular contract meetings review progress, and monitoring activities, and a current Quality Improvement Plan (QIP) is held and reviewed.  The contract will highlight clear guidance on actions to take when quality concerns are raised, and mitigation when internal and external changes may impact upon delivery and outcomes.

The College supports sub-contractors to complete the course review and self-assessment process, including quality improvement plans. It also offers support as required to share good practice through regular quality reviews, observation of teaching, learning and assessment, the Intensive Care process and learner and employer feedback.

Sub-contractors will collect, retain and submit to the College on request all relevant documents and evidence of student activity. This will be in line with GDPR regulations.

1. **Publication of Information Relating to Sub-contracting**

In compliance with ESFA and other agency funding rules that apply, the College will publish its sub-contracting rationale, Fees and Charges Policy and actual end-of-year sub-contracting fees and charges 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 subcontracting’ i.e. subcontracted delivery of full programmes or apprenticeships. It will not include the delivery of a service as part of the delivery of a programme (for example, buying the delivery of part of an apprenticeship or outreach support). Provision subcontracting lists will be agreed with local ESFA officials prior to publication.

The College will ensure all actual and potential subcontractors have access to this policy and any other relevant documents.

The College will charge a management fee usually at 20%, unless agreed otherwise, of funding drawn down from the ESFA dependent on the level of support and services given to the respective sub-contractor which includes:-

* Provision of a suitably qualified/experienced College liaison officer
* Advice and guidance at pre-contract stage and due diligence assessment
* Enrolment support (e.g. provision of paperwork, advice and guidance on student eligibility)and processing of enrolment documentation
* Data and financial management – timely and accurate processing and submission of data to enable drawdown of funds from the funding bodies and analysis to ascertain funding earned by sub-contractor and calculation of success rates
* Provision of regular class lists
* Regular review meetings and performance reports
* Compliance and quality assurance visits and ongoing support to address any areas for improvement including announced and unannounced site visits, lesson observations, tutor support and quality assurance and administration support

All invoices submitted by a sub-contractor must be supported by documentation as required in the contract. Where there are no issues relating to a sub-contractor’s submitted invoice, the College will endeavour to ensure that the payment of the invoice is made within 30 days of receipt.

1. **Monitoring, Review and Risk Management**

Any prospective sub-contractor will be required to complete the College’s Due Diligence Questionnaire to assess the level of risk should the College decide to enter a contractual agreement with that organisation.

Provision funded through the ESFA Adult Skills budget and the ESFA budget must comply respectively with the ESFA Funding Rules 2022/23 and ESFA Funding Guidance for Young People 2022 to 2022 (sub-contracting control regulations) and any updates published by the funding agencies during the year.

Sub-contractor performance will be monitored on an ongoing basis. Feedback on performance will be provided in writing, at face to face meetings, by telephone or e-mail. The methods used will be dependent upon the circumstances at any point in time. Feedback will also be provided at periodic contract performance review meetings.

Contributory risk factors that are used to identify the initial level of risk associated with a prospective sub-contractor will include:-

* Previous track record/performance
* Staff qualifications and experience relevant to delivery of agreed programmes
* Results of EV reports
* Financial standing of the sub-contractor
* Length of sub-contractor’s existence
* Contract size with regard to both funding and learner numbers
* Standards of internal quality assurance by sub-contractor
* Any previous OFSTED judgement/s
* Profile of learners
* Experience of working with ESFA funding methodology and requirements
* Geographic location, particularly for ESFA funded provision, to ensure provision is not outside of the College’s normal recruitment areas

During the period of contractual agreement the College will, on an on-going basis, also monitor the level of risk through:-

* Observations of teaching, learning and assessment
* Qualification achievement rates
* Actual income against contract target funding income.
* Standards of internal quality assurance (both curriculum and administration)
* Learner feedback (at workplace or by telephone or online learner surveys)
* Employer feedback (where appropriate)
* Learner progression

The risk factors associated with each sub-contractor will be discussed and recorded at review meetings and, where necessary, actions identified for the sub-contractor to undertake in order to reduce the level of risk.

Where a subcontractor is found to be providing a supply of services that does meet agreed targets and expectations of quality, the College can terminate any agreements.

The College can terminate any agreements. The College may seek recovery of funds particularly where the funding agencies’ conditions of funding have not been met or there is any other irregularity.

1. **Sub-Contractors Requirements**

Sub-contractors are required to ensure:

* The College is provided with Individual Learner Record (ILR) data to accurately reflect the agreed sub-contracted delivery
* The College and funding agencies (or other bodies nominated by the College or agencies) have access to the sub-contractor’s premises and all documents relevant to tracking learner’s progress, funding claims and any other purpose relating to the agreed sub-contracted delivery
* The College has access to the sub-contractor’s premises to monitor and quality assure the delivery of learning, including interviewing staff and students and directly observing the initial guidance and assessment (IAG) process
* All learners sign a learning agreement at the time of enrolment reflecting the outcome of initial guidance and assessment (IAG) and setting out their learning programme
* The agreed sub-contracted delivery is not further sub-contracted
* Funding for the agreed sub-contracted delivery is not “double-funded”, i.e. learners are not funded by the ESFA at any other institution

1. **Additional support for Sub-Contractors**

The additional support given to each subcontractor will be negotiated with that sub-contractor, but will be based on a risk approach and may include:

* Elements of the Study Programme
* Additional site visits
* Additional lesson observation
* Additional tutor support
* More rigorous verification

1. **Communication**

This Policy will be reviewed in each summer term and updated as required. It will be published on the College web site 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.

1. **External Assurance**

The College will undertake external assurance through an independent auditor to review sub-contracted delivery controls over all ESFA funded provision in line with guidelines for the current academic year.

**Appendix 6 – ESFA Sub-contracting Standard 2022/23**



**Subcontracting standard**

**Subcontracting assurance arrangements for all post-16 providers**

**July 2022**

**Contents**

[Introduction 3](#_TOC_250014)

[Definitions 4](#_TOC_250013)

[Transitional arrangements 5](#_TOC_250012)

1. [Pre-award activities 7](#_TOC_250011)
2. [Contract award and management 9](#_TOC_250010)
3. [People 11](#_TOC_250009)
4. [Administration 12](#_TOC_250008)
5. [Managing relationships 13](#_TOC_250007)
6. [Managing performance 14](#_TOC_250006)
7. [Payments and incentives 15](#_TOC_250005)
8. [Risk management 16](#_TOC_250004)
9. [Contract development and/or termination 17](#_TOC_250003)
10. [Provider development 18](#_TOC_250002)

[Annex A – Reporting requirements 19](#_TOC_250001)

[Annex B – Example report 20](#_TOC_250000)

# Introduction

The ESFA undertook a consultation on subcontracting reforms in February 2020. As part of that consultation, one of the proposals for reforming the future arrangements for subcontracting of ESFA funded post 16 education and training was that ESFA would develop an externally assured subcontracting standard to replace the audit certification process which is currently/was previously required.

The results of the consultation identified that this proposal would be welcomed, and the intention therefore is that this standard will be introduced from funding year 2022 to 2023 and will effectively act as a license to subcontract.

The standard is separate from, and different in purpose, to Ofsted’s Education Inspection Framework. It does not replace or overlap with Ofsted’s remit. The subcontracting standard is about oversight and management of public funds and ensuring that these are used to best effect, to maximise the value of those funds to benefit the learner.

This new framework will ensure that there is a clear and consistent approach for the (contract) management of subcontractors by lead providers and that there are robust assurance review arrangements.

It will assist in mitigating the risk of:

* + inadequate (contract) management of subcontractors
  + non-compliance with ESFA funding rules by subcontractors; and
  + fraudulent and incorrect funding claims

This document sets out the requirements for all providers who subcontract £100,000 or more of their delivery, across all ESFA funding streams.

# Definitions

## Lead provider

A lead provider is a college, training organisation or employer that has a direct contractual relationship with ESFA.

## Subcontractor

A subcontractor is a separate legal entity or an individual that has an agreement (called a subcontract) with you to deliver any element of the education and training we fund.

A separate legal entity includes companies in your group, other associated companies, and sole traders. An individual could include a person who is a sole trader, self- employed, or employed by an agency unless those individuals are working under your direct management and control in the same way as your own employees.

Each lead provider and subcontractor must have a valid UK Provider Registration Number (UKPRN).

## External auditor

An external auditor is a professionally qualified person from an organisation external to the provider that is able to provide an independent report on their subcontracting systems and controls. The person should be registered with an appropriate professional body.

For the sake of clarity, the external auditor cannot be an employee, director, trustee, shareholder or any other similar party with a vested interest in the provider, irrespective of whether their normal role is to carry out their audit work. The external auditor does not necessarily have to be a provider’s existing external auditor.

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# Transitional arrangements

We recognise that providers will need time to ensure that the elements of the standard are achievable, and we set out a timetable in our published further information document in March 2022.

The timetable, in table 1, sets out our clear expectation that providers will be required to continue with the current assurance arrangements in the first year the standard is published. We expect that providers will take this first year to ensure they are aligning their subcontracting delivery to the standard, where it does not already, and ensuring that they have appropriate evidence in place to ensure that they can demonstrate compliance with the standard.

Table 1: Timeline to transition to the subcontracting standard:

|  |  |  |
| --- | --- | --- |
| Funding Year | Current Requirement – External Audit Report | Externally Assured Standard |
| 2019 to  2020 | ESFA require a copy of the report by 30/09/2020 if:   * Subcontract £100k or more of apprenticeship funding * And/or * Subcontracts £100k or more of AEB/ESF funding   ESFA reserve the right to request copies of the report and associated action plan.  Currently chasing outstanding reports. | In development, utilising intelligence from the external audit report contents and working with internal/ external stakeholders. |
| 2020 to  2022 | Requirement for AEB, ESF and Apprenticeship provision to send certificate, report, and associated action plan to the agency by **30 September 2022.**  Guidance and funding rules updated to reflect that it will now be £100k or more across all 3 funding streams. Updated certificate to ensure ESFA has access to the correct information. | It is our intent to publish an initial draft by 31 July 2022. |
| 2022 to  2022 | We will include this requirement in the 16 to 19 funding rules and the requirement will then become if you subcontract out £100k or more of apprenticeship, AEB, ESF or 16 to 19 funding (rather than looking at individual funding stream level) you must get an external audit report and certificate. These must be sent to the agency by **31 July 2022.** | The standard will be introduced, and we expect providers to start working toward this. It will not be subject to any external validation in this transitional year. |
| 2022 to  2023 | This requirement will be replaced by the externally assessed standard. | First year of being externally validated prior to ESFA accreditation of standard. |

The ESFA understands that a one-size fits all approach is inappropriate in relation to the application of the standard. The standard and auditor guidance are designed to be reasonable and proportionate.

# Pre-award activities

Before you enter a subcontract arrangement you must be able to demonstrate:

* 1. There is a clear educational rationale/business case for subcontracting which aligns to the provider’s corporate and operational strategies. We would expect the business case to set out the policy, business and operational objectives including consultation with stakeholders and undertaking research to determine the education rationale. This rationale must consider the expectation ESFA has for providers to reduce their subcontracted provision. We would also expect the business case to be presented and approved at executive/board level for sign off.
  2. The education rationale meets one or more of the following aims:
     + enhances the opportunities available for learners
     + fills gaps in niche or expert provision or provides better access to training facilities
     + supports better geographical access for learners
     + offers an entry point for disadvantaged groups; or
     + gives consideration of the impact on individuals with shared protected characteristics, where there might otherwise be gaps
  3. The drafting process for the specification and requirements. This drafting process is concerned with breaking down the overall scope documented as part of the educational rational /business strategy into more detail and then, progressively, and iteratively, refining into schedules of detailed requirements, ensuring that the objectives for subcontracting will be met and the subcontractor will meet the requirements of this standard along with the requirements laid out in the funding rules.
  4. There is a procurement strategy that would cover the pre-qualification, qualification, and tendering procedures. As part of the strategy, whether this is new or an existing process, the provider would need to decide what pre- qualification is required in respect of the criteria resulting in a Pre-Qualification Questionnaire (PQQ) being produced for those expressing an interest.
  5. That the PQQ is sufficient to collect, but not limited to, the following information: organisation, including ultimate parent details including identity, ownership and background, principal activities (past and present), organisational chart, contractor/sub-contracting approach, professional/commercial affiliations, legal, financial, capability, quality management systems, Ofsted reports and experience and track record.
  6. The procurement strategy/process ensures that a robust assessment process for selecting subcontractors has been established that would review the

subcontractor’s completed PQQ as well as their capability to control quality, delivery, quantity, price and all the other factors contained in the subcontract. Following a successful appraisal, the subcontractor is placed on an approved list of contractors.

* 1. The procurement process includes the drafting of the ITT documents. Attention should be paid by the provider to ensure that the contract document sets out clearly, comprehensively, and unambiguously, the obligations of the parties to the agreement1.
  2. The evaluation process includes not only the analysis of the potential

subcontractor’s response to the main subject matter of the requirements set out in the ITT, such as price, delivery, quality, methodology, for example but also, most importantly, the quality of the bidder’s offer. There should be a clear rationale for how the tenders are evaluated and scored.

* 1. That following tender evaluation and, where appropriate, negotiation, the provider will satisfy themselves that an offer has been made which meets its requirements in all respects, including budgetary and capability, and consider that it is able to accept an offer and award the contract to the tenderer who meets the contract specification. It may then move directly to the award stage or make a recommendation to higher authority levels within the organisation for acceptance is aligned to the provider's strategic and operational objectives.
  2. That there is a contract management plan which determines how the contract will work once it has been awarded. It is vital that a contract management plan is drawn up in advance of contract award. This should set out how the obligations of all the parties should be carried out effectively and efficiently.
  3. That the proposed subcontract will meet the agreed educational needs, that it is achievable and affordable, and it addresses the desired outcome(s) of the subcontract, critical success factors, the possible alternatives, including existing contracts, the risks including the extent and where they may fall, identification of any contingent needs and ramifications of proceeding and timescales.
  4. Where appropriate you have sought approval from ESFA for any agreed subcontracting terms in relation to distance learning and whole programme subcontracting for 16 to 19 and there is evidence of this.
  5. That management fees have been determined for the full range of funding retained and charges that they wish to apply, and these have been agreed at executive level and published on the website. These should only exceed 20% in exceptional circumstances, and where they do, ESFA reserve the right to challenge.

1 In accordance with the Apprenticeship Funding Rules you must ensure that you comply with current and relevant procurement regulations. If you are a contracting authority, this means that you must comply with the Public Contracts Regulations 2015 (“the 2015 Regulations”). You must ensure that you select your Sub-Contractor(s) fairly, transparently and without discrimination and that you ensure that potential Sub-Contractors have sufficient capacity, quality and business standing to deliver the provision that is being subcontracted.

# Contract award and management

In preparing for contract management and providing oversight the provider must be able to demonstrate:

* 1. That all awarded contracts are managed by staff within the organisation who have clearly defined role(s) that have been agreed as part of the overall considerations in producing the business case.
  2. The defined roles ensure that contract ownership is clear, with the budget holder, senior responsible owner (SRO), and contract manager clearly defined (where appropriate).
  3. There are well defined policies and processes and a clear contract management plan, with a focus on outputs and a ‘whole life’ approach to performance. For example. this must include, where appropriate, evidence of how the provider will:

1. manage and oversee 16 to 19 distance and whole programme provision

through the life of each learner’s programme of study.

1. define how whole programme subcontracting for AEB will be agreed and managed.
2. ensure apprenticeship provision is not delivered solely by a subcontractor, as per the apprenticeship funding rules with specific regard to substance, leading the relationship, and the subcontracted delivery complimenting the main provider’s programme.
   1. How these policies, including the rationale, are reviewed by the provider ahead of each Funding Year. Furthermore, the provider should demonstrate that the policies and rationale have been appropriately authorised through the

organisation’s governance structure. Once reviewed, updated policies must be published by 31 October in the relevant funding year.

* 1. Where appropriate, overall ownership of contract management across the organisation is clear, with a ‘contract management senior responsible owner’ with responsibility for driving organisation-wide contract management performance.
  2. Contract management processes are aligned with, among others, wider organisational governance processes, operational boards, and risk structures.
  3. Contract management issues and performance are reported through the governance structure with senior level engagement.
  4. Regular assessment and evaluation must take place to ensure that the cost of contract management activities is justified and proportionate to the benefits obtained.
  5. Knowledge management is embedded, capturing key data and lessons from contract management process and experience both within the organisation and more widely.
  6. Professional contract management guidance is developed, or identified from external sources, and made available to contract managers.
  7. An appropriate assessment to ensure extremist organisations are not funded through the subcontracting Department of Education funding.

# People

In ensuring the right people are in place to carry out the contract management activities, the provider must demonstrate:

* 1. That either your business continuity / contingency plan incorporates the role of the contract manager(s)/ those with contract management responsibility (ideally through involvement during the tendering/contract award processes) or you ensure continuity by ensuring there are appropriate handover / information sharing procedures in place.
  2. The contract manager(s) have a detailed knowledge of the contract and other relevant issues, such as service level agreements, requirements in line with ESFA contract and funding rules and current subcontractor performance.
  3. The contract manager(s) have the appropriate skills (both specific contract management skills and more general commercial awareness and expertise), with access to relevant training and development. Experienced contract managers are utilised on key contracts.
  4. Contract manager(s) have accurate job descriptions, roles are positioned at an appropriate level and salary, and there is a career path for contract management staff.
  5. Contract manager(s) have clear objectives and reporting lines, and their performance is managed through reviews and appraisals.
  6. The contract manager(s) have appropriate delegated authority to manage the contract effectively.

# Administration

In managing the contract(s) and the timetable for making key decisions, the provider must demonstrate that:

* 1. Signed contracts are stored and logged and are easily accessible when required; for complex contracts, a summary and/or contract operations guide should be produced.
  2. Key contractual information is recorded appropriately to allow, for example; search capability; documentation of up-to-date contract information; and key dates.
  3. There are mechanisms in place for identifying key contract ‘trigger points’, such as

notice periods.

* 1. There is schedule of regular as well as ad hoc reporting of contract management information and retention of appropriate documentation such as, minutes of contract meetings, reviews of teaching and learning etc.
  2. There are appropriate processes and procedures in place to ensure that contracts are closed and/or terminated efficiently.
  3. The provider has considered the cost of contract management activities to the subcontractor, and the cost is proportionate to the contract size and risk.

# Managing relationships

The provider must have appropriate procedures in place to manage their relationships with subcontractors and be able to demonstrate that:

* 1. Proactive conversations and/or independent checks are undertaken in relation the subcontractor at least on an annual basis which cover and document as a minimum, the subcontractor(s):

1. current ownership and person of significant control. Notification must be made to ESFA where this has changed from a previous year.
2. current/ latest financial health position.
3. a review of learning activity delivered, including compliance with the relevant funding rules for each programme2.
4. the subcontractor(s) business continuity / contingency plan remains relevant or has been updated appropriately.
   1. Their contract manager understands their own role and has clear visibility of the roles and responsibilities of staff on the subcontractor side.
   2. The respective responsibilities of the contract manager and the subcontractor are

clear, and potentially defined in a ‘joint statement of intent’ or similar document.

* 1. Continuity of key subcontractor staff is desirable (ideally through involvement during the sales process); where this cannot be achieved, there must be a handover from the staff responsible for the tendering process.
  2. Both regular structured and informal communication routes between the contract manager and subcontractor are open and used; customer and subcontractor staff are co-located where appropriate.
  3. Users are given clear expectations and an understanding of the contract and the services/ performance to be delivered (for example, through newsletters or briefings).
  4. Communications between the contract manager, subcontractor, and other stakeholders (users of the contract and others such as technical experts) are effective; and stakeholders are involved in contract management processes where appropriate.
  5. Problem resolution processes are well defined and used and are designed to ensure minor problems do not escalate and cause relationship issues; a ‘blame culture’ is avoided (for example, using a ‘relationships charter’ or similar document).

2 For apprenticeship provision the lead provider must ensure that the subcontractor does not deliver the entirety of the programme. In addition, the lead provider must take regard to substance, leading the relationship, and the subcontracted delivery complimenting their main programme. Furthermore, the lead provider should utilise the funding rules monitoring reports to ensure that their subcontractors are not claiming funding for the same learners through a direct contract with ESFA or another subcontracting relationship with another lead provider.

# Managing performance

ESFA’s expectation is that a prime will have processes and procedures in place to effectively manage subcontracted provision, you will be required to demonstrate that as a minimum:

* 1. Service management is well structured; baselines are understood by both parties, and subcontractors understand the service they are required to deliver. The contract manager ensures that the lead provider furnishes the subcontractor with the information and contacts needed to deliver the service.
  2. A performance management framework is in place when the contract is signed. The framework is comprehensive, objective and provides incentives for the subcontractor to meet or exceed agreed performance standards.
  3. Service levels agreements are in place, and are linked to business needs, understood by the subcontractor, and monitored by the contract manager and/or end users.
  4. Subcontractor performance is assessed using clear, objective, and meaningful metrics, linked where appropriate to ESFA’s funding rules and/or guidance.
  5. Clear processes are in place to handle operational problem resolution and resolve issues as quickly as possible.
  6. Where appropriate, user compliance with the contract is monitored and managed to ensure maximum operational effectiveness and value for money.
  7. Regular and routine feedback is given to subcontractors on their performance.
  8. There are clear contact points for service users both within the subcontractor organisation and with the contract manager. Users understand what the contract is intended to deliver and are involved in the assessment of subcontractor performance where relevant. Users understand escalation routes where issues arise.
  9. Changes in user requirements are captured and considered as part of formal change and contract management processes.
  10. There are formal performance reviews with subcontractors, with documented improvement plans agreed where necessary, covering both operational issues and adherence to key contractual requirements, for example, on data security.

# Payments and incentives

ESFA’s expectation is that a lead provider will have sufficient processes and procedures in place to effectively monitor the financial payments in relation to their subcontracted provision, you will be required to demonstrate that as a minimum:

* 1. Payment mechanisms are documented and are clear and well understood by all parties (including incentives, penalties, and non-standard charges).
  2. Payment processes are well defined and efficient; appropriate checks and authorisation processes are in place for paying invoices.
  3. The costs of the services delivered, and contract management costs are mapped against budgets and allocated appropriately.
  4. Payment changes after the contract is let, for example from contract variations or benchmarking/ market testing, are made using contractual provisions and demonstrated to provide value for money.
  5. Payments are not made in advance of evidence to demonstrate learning activity has been undertaken.

# Risk management

In order to provide assurance to ESFA that you have effective risk management procedures in place to effectively manage the public money which is paid to subcontractors. As a minimum you will be expected to demonstrate:

* 1. Contractual/subcontractor risk management is in place with clear responsibilities and processes, identification of who is best placed to manage risk, and subcontractor involvement where appropriate.
  2. Risks are formally identified and monitored regularly, with mitigating actions developed and implemented where possible, and ‘obsolete’ risks removed from consideration where appropriate.
  3. Escalation and reporting routes are in place for risk governance.
  4. Contingency plans are developed to handle subcontractor failure (temporary or long-term failure/default); exit strategies are developed and updated through the life of the contract.
  5. Contractual terms around termination are understood and monitored by the contract manager.
  6. Contractual terms around warranties, indemnities and insurance are understood and monitored by the contract manager.
  7. Contractual terms around security and confidentiality are understood and monitored by the contract manager, particularly issues relating to the security/confidentiality of personal data.
  8. Dispute resolution processes are in place, including agreed adjudication procedures, mediation, and arbitration.
  9. The contract manager monitors the subcontractor’s financial health and business performance (including using credit rating agencies).
  10. The contract manager monitors the subcontractor’s compliance with contractual ‘non-performance’ issues (for example, on tax and sustainability targets).

# Contract development and/or termination

In order to ensure that changes to the contract or termination are handled appropriately and efficiently the lead provider must:

* 1. Undertake analysis of their subcontracted activity each year, to inform the progress made in their plans for a reduction across the 3-year period.
  2. Regularly review the subcontract (with a view to updating where necessary) to ensure it meets evolving business and educational needs.
  3. Ensure processes are in place that clearly lay out the governance of contractual change – who needs to approve what and how it will happen – with a focus on effective and prompt change implementation.
  4. Ensure there are clear processes for the management of minor changes and contract variations, with a focus on the cost/effort being proportionate to the importance and value of the change.
  5. Ensure there are more rigorous processes to handle major contractual changes, including clear approval mechanisms and accountabilities, and controls to demonstrate that changes offer value for money.
  6. Where appropriate, undertake value for money testing of existing services through benchmarking or other processes.
  7. Ensure there are processes to cover the introduction of new services under the contract, including market testing where necessary.
  8. Have dispute handling processes in place to address any change related issues.
  9. Have processes to account for various types of contractual changes. Both parties have a clear understanding of the arrangements for any extension of the contract (both scope and time) and related issues.
  10. Ensure processes are in place to handle commercial (financial) changes to the contract in a fair and structured manner.
  11. Manage price changes fairly and effectively with the use of mechanisms such as benchmarking, competitive tendering (for example, for major additional works), or other techniques such as open book pricing as appropriate, to demonstrate value for money.
  12. Demonstrate their rationalisation of specifications and demand management are considered as options to achieve better value for money.

# Provider development

Improving provider performance and capability is key to developing the relationship with subcontractors. Lead providers must demonstrate they have:

* 1. Processes in place that clearly set out how provider development activities will be planned, managed, and governed.
  2. Clear processes for benefits measurement and capture are in place to ensure that provider development is focused on continuous improvement and achieving value for the lead provider.
  3. The lead provider understands what motivates and drives the subcontractor and how provider development fits with the provider’s goals.
  4. Provider operational performance improvement activities (for example, ‘Lean’ and ‘6-sigma’), with potential input or assistance provided by the lead provider.
  5. Joint working or shared activities between the 2 parties for the benefit of both the provider and subcontractor (for example, process improvement, shared training, task forces or joint project teams).
  6. Provider improvement activities relating to wider government initiatives, with input or assistance provided by the lead provider (for example, on sustainability, disability employment issues, use of SMEs (Small and Medium Sized Enterprises) and BMEs (Black Minority Ethnic suppliers)).
  7. Shared risk reduction programmes or activities.
  8. Shared management activities (for example, provider boards) to drive performance improvement.

# Annex A – Reporting requirements

Separate guidance for auditors will be issued in 2022 and appended to future versions of this guidance.

Each reporting auditor can use their own stylised report, however, it must include the following as a minimum:

* name and contact details of the organisation and auditor undertaking the audit
* name of the provider being audited and the provider audit contact
* funding year applicable to the review
* date the review was undertaken and concluded
* report status [Draft] [Final]
* table of contents
* executive summary / Summary of findings linked to the standard in a tabular format:
  + subcontracting standard requirements
  + compliance status
  + number of recommendations raised; and
  + summary of findings
* agreed objectives and scope of work
* approach
* detailed findings and recommendations linked to each point of the standard in a tabular format with the following headings:
  + area of standard
  + findings / observations / issues
  + risk / implications
  + recommendations
  + compliance rating
  + response from the provider
  + responsible officer & target date

# Annex B – Example report

[Name of audit organisation]

[Name and contact details of auditor]

[Draft] or [Final] Report of the assessment of ESFA Subcontracting standard for [Provider ABC] for funding year [2022/23]

[Insert Date] [Contents]

## Example: Executive summary

During the course of our review, we have identified the following observations which are recorded in detail at [cross reference to detailed findings] and summarised in the table below:

|  |  |  |  |
| --- | --- | --- | --- |
| **Subcontracting Standard Requirements** | **Compliance status** | **No of Recs raised** | **Summary of findings** |
| Pre-Award Activities | Fully Compliant | 0 | The review identified that the provider was fully compliant with all requirements of the standard. |
| Contract Award & Management | Partially Compliant | 2 | We identified 2 areas for improvement. Recommendations have been made in respect of [relevant detail] |
| People | No compliance | 6 | The provider were unable to supply evidence to demonstrate compliance with the standard |
| Administration | Fully Compliant | 0 | The review identified that the provider was fully compliant with all requirements of the standard. |
| Managing Relationships | Fully Compliant | 0 | The review identified that the provider was fully compliant with all requirements of the standard. |
| Managing Performance | Fully Compliant | 0 | The review identified that the provider was fully compliant with all requirements of the standard. |
| Payments and Incentives | Fully Compliant | 0 | The review identified that the provider was fully compliant with all requirements of the standard. |
| Risk Management | Fully Compliant | 0 | The review identified that the provider was fully compliant with all requirements of the standard. |
| Contract Development and/or termination | Fully Compliant | 0 | The review identified that the provider was fully compliant with all requirements of the standard. |
| Provider Development | Fully Compliant | 0 | The review identified that the provider was fully compliant with all requirements of the standard. |

## Example: Introduction

The ESFA undertook a consultation on subcontracting reforms in February 2020. As part of that consultation, one of the proposals for reforming the future arrangements for subcontracting of ESFA funded post 16 education and training was that ESFA

would develop an externally assured subcontracting standard to replace the audit certification process which was previously required.

The subcontracting standard was introduced to the sector to drive improvement in the quality of contract management and oversight by lead providers. This standard will ensure that there is a clear and consistent approach for the (contract) management of subcontractors by lead providers and that there are robust assurance review arrangements. It will help to mitigate the risk of:

* inadequate (contract) management of subcontractors
* non-compliance with ESFA funding rules by subcontractors; and
* fraudulent and incorrect funding claims

This report is a review of [Provider ABC’s] compliance against the subcontracting standard. It will assist in ESFA’s in its decision making as to whether the provider has the systems and controls in place to manage their subcontractors in line with the standard and provide assurance that subcontracted provision is appropriately managed.

## Example: Objectives and scope

The ESFA has designed the approach and methodology for this review. This is to ensure that the review sufficiently covers all requirements and that there is consistency in approach and quality.

It has been designed to gain assurance that providers are managing their subcontracted provision to a high standard that ensures that public funds are used appropriately and for the purpose for which they were intended.

Our review covered all requirements of the standard as detailed in the executive summary and the compliance with the subcontracting funding rules which cover the following funding streams:

* carry-in apprenticeships
* adult education budget
* apprenticeships (for starts from 1 May 2017)
* 16 to 19 study programmes

## Example: Approach

Outline of the approach undertaken, and procedures performed to identify the detailed findings and subsequent recommendations. Detail the type and levels of assurance / audit activity and align to international auditing standards where appropriate.

## Example: Detailed finding and recommendations

Our detailed observations and recommendations are recorded in the table below:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Area of standard | Finding / observation  / issue | Risk/ Implication | Recommendation | Compliance Rating | Response from the provider | Responsible Officer & Target Date |
| 2.1 CM | [Nature of finding] | Partially compliant with the standard | The provider should retain evidence to support… |  | Disagreed, supplementary evidence submitted to ESFA  alongside report. | Jane Smith 01  April 2023 |
| 2.1 CM | [Nature of finding] | Partially compliant with the standard |  |  | Agreed | Jules Smith 01  April 2023 |
| 3.1 People | [Nature of finding] | Not compliant with standard |  |  | Agreed | Jaden Smith 01  April 2023 |
| 3.2 People | [Nature of finding] | Not compliant with standard |  |  | Agreed | Jack Smith 01  April 2023 |
| 3.3 People | [Nature of finding] | Not compliant with standard |  |  | Agreed | Jorgy Smith 01  April 2023 |
| 3.4 People | [Nature of finding] | Not compliant with standard |  |  | Agreed | Joey Smith 01  April 2023 |
| 3.5 People | [Nature of finding] | Not compliant with standard |  |  | Agreed | Jake Smith 01  April 2023 |
| 3.6 People | [Nature of finding] | Not compliant with standard |  |  | Agreed | Jill Smith 01 April 2023 |
|  |  |  |  |  |  |  |



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write to Information Policy Team, The National Archives, Kew, London, TW9 4DU

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