



East Coast College

Sub-contracting Policy 2022/23

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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.

2. Scope

The Policy applies to all third party sub-contracted supply chain activity supported with funds supplied by the ESFA or any successor organisations which meet the ESFA's definition of Provision Subcontracting, i.e. subcontracting of full qualifications and or frameworks/ standards by the College to a third party or delivery partner.

3. 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.

4. 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.

5. **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 agencies
- It supplements and does not duplicate the College's curriculum offer
- It offers progression opportunities into the College

Formal subcontracting will be reviewed annually, and revised in line with government guidance and governing body approval.

6. **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.

7. Scope of Provision - Subcontracting

The level of sub-contracted provision will be determined as part of the College's annual curriculum planning and the ongoing review throughout the year. This level may vary necessarily from year to year in the volume of partners, curriculum offer and the value of overall contracts in line with current ESFA guidance.

Partnerships will be explored by the Senior Leadership Group (SLG), where there is an identified benefit to the community or employers.

For ESFA work, all relevant procurement and tendering procedures will be followed, and reported to SLG and governors throughout the year.

For commercial opportunities, the Assistant Principal will undertake the relevant due diligence and seek SLG approval.

8. ESFA Guidance and Review on Sub-contracting

The ESFA sub-contracting standard operates from the 2022/23 funding year and effectively acts as a license to sub-contract.

The subcontracting standard provides an 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.

Use of the framework will ensure that there is a clear and consistent approach for the contract management of subcontractors by the College 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

The sub-contracting standard requires the College to operate the following arrangements:

8.1. Selection and Review of Sub-contractors

The College will ensure:

- A clear educational rationale/business case is made for subcontracting which aligns to the College's corporate and

operational strategies. The business case will set out the policy, business and operational objectives including consultation with stakeholders and research to determine the education rationale. This rationale must consider the expectation ESFA has for colleges to reduce their subcontracted provision. The business case will be approved by the Senior Management Group.

- 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
- The drafting process for the specification and requirements breaks down the overall scope into more detail and then, progressively, and iteratively, refines it into schedules of detailed requirements, ensuring that the objectives for sub-contracting will be met and the sub-contractor will meet the requirements of this standard, along with the requirements laid out in the funding rules.
- The procurement strategy covers the pre-qualification, qualification, and tendering procedures, including what pre-qualification is required in respect of the criteria, resulting in a Pre-Qualification Questionnaire (PQQ) being produced for those expressing an interest.
- The PQQ is sufficient to collect, but not limited to, the following information:
 - organisation background, including ultimate parent details including identity, ownership and background,
 - principal activities (past and present),
 - organisation chart,
 - contractor/sub-contracting approach,
 - professional/commercial affiliations,
 - legal and financial capability,
 - quality management systems, Ofsted reports
 - experience and track record.
- The procurement strategy/process ensures that a robust assessment process for selecting subcontractors has been established that will 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 will be placed on an approved list of contractors.

- The procurement process includes the drafting of the ITT documents, including ensuring the contract document sets out clearly, comprehensively, and unambiguously, the obligations of the parties to the agreement.
- The evaluation process includes not only the analysis of the potential sub-contractor'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 will be a clear rationale for how the tenders are evaluated and scored.
- Following tender evaluation and, where appropriate, negotiation, it is satisfied that an offer has been made which meets its requirements in all respects, including budgetary and capability, and considers that it is able to accept an offer and award the contract to the tenderer who meets the contract specification. At this point an offer of an award will be recommended to the SMG.
- The contract management plan which determines how the contract will work once it has been awarded is drawn up in advance of contract award. It will set out how the obligations of all the parties should be carried out effectively and efficiently.
- The proposed sub-contract will meet the agreed educational needs, that it is achievable and affordable, and it addresses the desired outcome(s) of the sub-contract, 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.
- It seeks, and retains evidence of, ESFA approval for any agreed sub-contracting terms in relation to distance learning and whole programme sub-contracting for 16 to 19 year olds.
- Management fees have been determined for the full range of funding retained and charges that they wish to apply, and these have been agreed by the SMG and published on the College website. These will only exceed 20% in exceptional circumstances, and it is recognised where they do, the ESFA reserves the right to challenge. Where any specific guidance exists e.g. 15% for Princes Trust provision, the=is will be followed.

8.2. Contract Award and Management

The College will ensure:

- All awarded contracts are managed by staff who have clearly defined roles that have been agreed as part of the overall considerations in producing the business case.
- The defined roles ensure that contract ownership is clear, with the budget holder, senior responsible owner (SRO), and contract manager clearly defined.
- 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. This will include evidence of how the college will:

- Manage and oversee 16 to 19 distance and whole programme provision through the life of each learner's programme of study.
- Define how whole programme subcontracting for AEB will be agreed and managed.
- Ensure apprenticeship provision is not delivered solely by a sub-contractor, as per the apprenticeship funding rules with specific regard to substance, leading the relationship, and the subcontracted delivery complimenting the main college's programme.
- Carry out an annual policy and rationale review and obtain Corporation approval to the revised document.
- Overall ownership of contract management across the College is clear, with contract management being owned by a senior leader with responsibility for driving College-wide contract management performance.
- Contract management processes are aligned with, among governance processes, operational boards, and risk structures.
- Contract management issues and performance are reported through the governance structure, including SMG involvement..
- Regular assessment and evaluation takes place to ensure that the cost of contract management activities is justified and proportionate to the benefits obtained.
- Knowledge management is embedded, capturing key data and lessons from contract management process and experience both within the College and more widely.
- Professional contract management guidance is developed, or identified from external sources, and made available to contract managers.
- An appropriate assessment is carried out to ensure extremist organisations are not funded through the sub-contracted Department of Education funding.

8.3. People

The College will have the right people in place to carry out the contract management activities through ensuring:

- Continuity is ensured by ensuring there are appropriate handover / information sharing procedures in place.
- The contract manager has 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 sub-contractor performance.

- The contract manager has the appropriate skills (both specific contract management skills and more general commercial awareness and expertise), with access to relevant training and development.
- The contract manager has an accurate job description, and is positioned at an appropriate level and salary, with a career path.
- The contract manager has clear objectives and reporting lines, and their performance is managed through reviews and appraisals.
- The contract manager has appropriate delegated authority to manage the contract effectively.

8.4. Administration

In order to manage contracts and the timetable for making key decisions, the College will ensure:

- 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.
- Key contractual information is recorded appropriately to allow, for example; search capability; documentation of up-to-date contract information; and key dates.
- There are mechanisms in place for identifying key contract 'trigger points', such as notice periods.
- 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.
- There are appropriate processes and procedures in place to ensure that contracts are closed and/or terminated efficiently.
- The cost of contract management activities to the sub-contractor has been considered, and the cost is proportionate to the contract size and risk.

8.5. Managing Relationships

In order to have procedures in place to manage its relationships with sub-contractors, the College will ensure:

- Proactive conversations and/or independent checks are undertaken in relation the sub-contractor at least on an annual basis which cover and document as a minimum:
 - the subcontractor's current ownership and person of significant control, notification will be made to ESFA where this has changed from a previous year.
 - the subcontractor's current/ latest financial health position.
 - a review of learning activity delivered, including compliance with the relevant funding rules for each programme.

- the sub-contractor's business continuity / contingency plan remains relevant or has been updated appropriately.
- The sub-contractor's contract manager understands their own role and has clear visibility of the roles and responsibilities of staff on the sub-contractor side.
- The respective responsibilities of the contract manager and the sub-contractor are clear, and potentially defined in a 'joint statement of intent' or similar document.
- Continuity of key sub-contractor staff is desirable; where this cannot be achieved, there must be a handover from the staff responsible for the tendering process.
- Both regular structured and informal communication routes between the contract manager and sub-contractor are open and used; customer and sub-contractor staff are co-located where appropriate.
- Users are given clear expectations and an understanding of the contract and the services/ performance to be delivered.
- Safeguarding processes in line with up to date legislation and the College's expectations are followed by the sub-contractor to ensure students are not at risk within the provision.
- Communications between the contract manager, sub-contractor, and other stakeholders are effective and stakeholders are involved in contract management processes where appropriate.
- 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.

8.6. Managing Performance

In order to meet the ESFA's expectations around performance related processes and procedures, the College will ensure:

- Service management is well structured; baselines are understood by both parties, and sub-contractors understand the service they are required to deliver. The contract manager ensures that the College furnishes the sub-contractor with the information and contacts needed to deliver the service.
- A performance management framework is in place when the contract is signed. The framework is comprehensive, objective and provides incentives for the sub-contractor to meet or exceed agreed performance standards.
- Service levels agreements are in place, and are linked to business needs, understood by the sub-contractor, and monitored by the contract manager and/or end users.
- Sub-contractor performance is assessed using clear, objective, and meaningful metrics, linked where appropriate to ESFA's funding rules and/or guidance.

- Clear processes are in place to handle operational problem resolution and resolve issues as quickly as possible.
- Where appropriate, user compliance with the contract is monitored and managed to ensure maximum operational effectiveness and value for money.
- Regular and routine feedback is given to sub-contractors on their performance.
- There are clear contact points for service users both within the sub-contractor organisation and with the contract manager. Users understand what the contract is intended to deliver and are involved in the assessment of sub-contractor performance where relevant. Users understand escalation routes where issues arise.
- Changes in user requirements are captured and considered as part of formal change and contract management processes.
- 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.

8.7. Payments and Incentives

In order to meet the ESFA's expectations around processes and procedures to effectively monitor financial payments made to sub-contractors, the College will ensure:

- Payment mechanisms are documented and are clear and well understood by all parties (including incentives, penalties, and non-standard charges).
- Payment processes are well defined and efficient; appropriate checks and authorisation processes are in place for paying invoices.
- The costs of the services delivered, and contract management costs are mapped against budgets and allocated appropriately.
- 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.
- Payments are not made in advance of evidence to demonstrate learning activity has been undertaken.

8.8. Risk Management

In order to meet the ESFA's expectations around risk management processes and procedures to effectively manage the payments made to sub-contractors, the College will ensure:

- Contractual/sub-contractor risk management is in place with clear responsibilities and processes, identification of who is best placed to manage risk, and sub-contractor involvement where appropriate.

- Risks are formally identified and monitored regularly, with mitigating actions developed and implemented where possible, and 'obsolete' risks removed from consideration where appropriate.
- Escalation and reporting routes are in place for risk governance.
- Contingency plans are developed to handle sub-contractor failure (temporary or long-term failure/default); exit strategies are developed and updated through the life of the contract.
- Contractual terms around termination are understood and monitored by the contract manager.
- Contractual terms around warranties, indemnities and insurance are understood and monitored by the contract manager.
- Contractual terms around security and confidentiality are understood and monitored by the contract manager, particularly issues relating to the security/confidentiality of personal data.
- Dispute resolution processes are in place, including agreed adjudication procedures, mediation, and arbitration.
- The contract manager monitors the sub-contractor's financial health and business performance (including using credit rating agencies).
- The contract manager monitors the sub-contractor's compliance with contractual 'non-performance' issues e.g. on tax and sustainability targets.

8.9. Contract Development and/or Termination

In order to ensure changes to the contract or termination of the contract are handled appropriately and efficiently, the College will ensure:

- Analysis is undertaken of its sub-contracted activity each year, to inform the progress made in their plans for a reduction across the 3-year period.
- The subcontract will be regularly reviewed, with a view to updating where necessary, to ensure it meets evolving business and educational needs.
- 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.
- 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.
- 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.
- Where appropriate, value for money testing is undertaken of existing services through benchmarking or other processes.
- There are processes to cover the introduction of new services under the contract, including market testing where necessary.

- There are dispute handling processes in place to address any change related issues.
- There are processes to account for various types of contractual changes to enable both parties to have a clear understanding of the arrangements for any extension of the contract, both in scope and time, and related issues.
- There are processes in place to handle commercial (financial) changes to the contract in a fair and structured manner.
- Price changes are managed 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.
- Its rationalisation of specifications and demand management are considered as options to achieve better value for money.

8.10. College Development

In order to develop relationships with sub-contractors through improved College performance and capability, the College will ensure:

- Processes are in place that clearly set out how College development activities will be planned, managed, and governed.
- Clear processes for benefits measurement and capture are in place to ensure that College development is focused on continuous improvement and achieving value for the College.
- It understands what motivates and drives the sub-contractor and how College development fits with the College's goals.
- The College has operational performance improvement activities.
- Joint working or shared activities are for the benefit of both the college and sub-contractor, e.g., process improvement, shared training, task forces or joint project teams.
- Its improvement activities relate to wider government initiatives, with input or assistance provided by the College e.g. on sustainability, disability employment issues, use of SMEs (Small and Medium Sized Enterprises) and BMEs (Black Minority Ethnic suppliers).
- There are shared risk reduction programmes or activities.
- There are shared management activities to drive performance improvement.

9. 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.

10. 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.