

# **Fees and Charges Policy for Subcontracts**

## 1. Purpose

The purpose of this policy is to:

- Provide clear guidance on DN Colleges Group's ("**the College**") procurement and robust due diligence processes in relation to subcontractors and on how the College will continuously seek to procure high-quality subcontractors to deliver national priorities both locally and regionally in a manner which is fair and transparent to ensure compliance with funding requirements and that the highest quality of learning is made available.
- Outline clear transparency for all subcontractors, funding bodies and other interested parties regarding the College's support and charging rationale related to our subcontracted provision.
- Maintain the highest standards of delivery across all subcontractors' teaching, learning and assessment activities.

## 2 Scope

This policy applies to all supply chain activities supported with funds provided by the Education & Skills Funding Agency ("**ESFA**") or South Yorkshire Mayoral Combined Authority ("**SYMCA**") whereby the College enters into a subcontracting agreement with a supplier in relation to 16-18, Adult Skills or apprenticeships provision.

This policy also governs any potential and actual subcontracting arrangements for which the College intends to claim or actually claims public funding for provision that is delivered on behalf of the College.

This policy provides transparency for all subcontractors, funding bodies and other interested parties regarding the procurement, due diligence process, support and charging rationale related to the College's subcontracted provision.

The implementation of a policy of this nature is a compulsory requirement for every further education college and every private training provider who intends to subcontract government funding. This policy has been developed in accordance with the ESFA's Funding Rules (including its specific rules relating to delivery subcontracting).

## 3 Rationale

The College recognises the benefits that effective subcontracting can bring to extending accessibility of provision for students and thereby contributing to the economic prosperity of our neighbouring local communities.

The ESFA defines a subcontractor as "*a separate legal entity or an individual that has an agreement (called a subcontract) with a lead provider to deliver any element of the education and training that the ESFA fund*".

A separate legal entity includes but is not limited to companies/organisations in the College's group, other associated companies and sole traders. An individual subcontractor could include

a person who is a sole trader, self-employed, a freelancer or someone who is employed by an agency, unless those individuals are working under the direct management of the College and are controlled in the same way as the College's own employees. This **does not include** relationships between the College and an apprenticeship end-point assessment organisation, or between the College and other third parties providing services such as marketing.

The College will only subcontract provision where the subcontracting aligns to our corporate and organisational strategies, enhances the quality of the College's learner offer, and (in particular) meets one or more of the following aims:

- enhances the opportunities available to 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
- gives consideration of the impact on individuals with shared protected characteristics, where there might otherwise be gaps

The College's specific rationale for entering a particular subcontract shall be stated within the schedules to the corresponding subcontract.

The College does not subcontract delivery to meet short-term funding objectives.

The College will only award subcontracts for delivering funded provision to legal entities. If the legal entity is a registered company, it must be recorded as 'Active' on the Companies House database (<https://find-and-update.company-information.service.gov.uk/>). Subcontractors must hold a valid UK Provider Reference Number (UKPRN) and be registered on the UK Register of Learning Providers (UKRLP).

Subcontracting may in particular arise in connection with the College being named as the lead provider for a collaborative bid and/or establishing strategic partnerships that enable growth opportunities.

## **4 Quality Assurance, Administrative Support and Delivery Fees**

- 4.1 The College shall, in respect of each subcontract, deduct and retain from the ESFA/SYMCA/other public funding an amount calculated in accordance with the schedules to the relevant subcontract document by way of quality assurance, administrative support and delivery fees as agreed with the relevant subcontractor. Further details of how these retained amounts are used by the College are set out below (in addition to being set out in each subcontract document itself).

The rationale adopted by the College to determine the level of such fees retained through each subcontract is a risk-based approach. Contributory risk factors that would influence the level of such fees shall include:

1. Type of subcontractor proposed to be engaged
2. Type of provision to be delivered by the subcontractor
3. Previous track record of the subcontractor
4. Previous success levels of the subcontractor
5. Risk Rating of the subcontractor

## Risk banding table

The percentage figures stated below refer to the level of such fees that will be set by the College (depending on the subcontractor's risk band and the type of delivery) as a percentage of the corresponding funding received by the College:

<b>Subcontractor Risk Rating Band</b>	<b>Adult Skills</b>	<b>Apprenticeships rate (* may vary depending on the College's delivery %)</b>	<b>16-19</b>
Low	15%	20%*	15%
Medium	20%	25%*	20%
High	25%	30%*	25%

The level of such fees retained by the College may change over the course of the corresponding subcontract should the College's assessment of the subcontractor's risk rating and will also be dependent on the related funding stream and level of support required.

The fees retained by the College shall be used to account for the College's own operating, quality assurance and related costs incurred by the College in connection with the relevant subcontract and shall be further particularised in the schedules to the relevant subcontract. An example of such a particularisation can be seen below:

### Sample breakdown of how the College would typically use a 15% fee:

<b>Percentage of fee</b>	<b>Activity</b>
10%	processing enrolments, learner registrations, IT platform access for managing learner progress and IT support
5%	provision of learner materials including handbook and induction support
40%	managing the quality of provision including observations, IQA, SAR/QIP monitoring
30%	management of the subcontract including contract meetings, operational management meetings, performance management reviews, performance monitoring
0%	delivery of specific training
0%	provision of specific delivery equipment or materials
15%	provision of learner support by College teams and access to College facilities and resources

In all cases, these costs must represent reasonable and proportionate costs based on the management and support required to deliver the relevant programme and each cost must contribute to the delivery of high-quality learning. This will be determined as part of the initial due diligence and contract negotiation process and for each subcontract will be explained further in the schedules to the relevant subcontract.

## 5 Selection of Subcontractors Including Due Diligence and Tendering

- 5.1 If the College has not previously subcontracted provision funded by the ESFA or SYMCA it will seek approval in writing from the relevant agency prior to awarding a related contract with a subcontractor. Once approval is given by the relevant agency, providers will be invited to submit an application.

Applicants for a subcontract who successfully complete the procurement process must also satisfy the College's related Gateway and Due Diligence checks and any applicable pre-contract requirements before a subcontract is issued to them. Applicants can be rejected at any stage of this process. If the applicant is successful and satisfies all related checks and other requirements, the College will approve the applicant to work with the College as a subcontractor and an initial 1-year subcontract shall be issued.

Due diligence includes a review of the subcontractor's standard policies and a check of the subcontractor's financial stability in relation to future partnership and subcontracting arrangements (with regard in particular to the ESFA's 'Funding Higher Risk Organisations and Subcontractors Policy' requirements). This activity will not be undertaken in isolation and other pre-contractual checks will be considered, depending on individual contract requirements and the subcontractor's own circumstances (including site visits and full pre-contract visit).

Once subcontractors have been engaged on a subcontract, they are required to complete an annual refresh application of the College's Gateway and Due Diligence process to remain on the College's supply chain and be awarded with new subcontracts. The refresh includes a review of the subcontractor's standard policies by the College and a check of the subcontractor's ongoing credit risk rating. Re-assessment of annual accounts also takes place, and a further full financial assessment is completed at this time.

Any subcontractor who does not satisfy or who ceases to satisfy the College's due diligence and finance health checks, will have their right to recruit new learners suspended and may have their subcontract terminated, dependant on the circumstances.

Where a subcontractor is in receipt of an aggregate subcontract value of ESFA funding for delivering education and training that totals £100,000.00 or more in any funding year, the College will share the results of any related due diligence checks with the ESFA via a signed return on a timely basis.

The College will not permit subcontracting to take place with anyone who does not hold a direct written contract with the College. No secondary level of subcontracting is permitted.

The College will, at the end of each academic year, publish information relating to the actual levels of funding retained and paid for each of the College's subcontractors.

## **6 Contracting and Payment Terms**

- 6.1 All subcontractors engaged by the College will be issued with a written subcontract. The subcontract will set out the maximum amount of funding that is available to the subcontractor under the relevant subcontract (i.e. maximum contract value) and the payment procedure (monthly or otherwise). The College will agree a fee structure and payment schedule with each subcontractor that recognises the full extent of that subcontractor's subcontracted provision, the risks presented by this and the costs to the College of related contract management and risk mitigation.

Subcontractors' performance updates will be provided to the College's executive team on a monthly basis.

The College reserves the right to vary the profile under any subcontract to meet any relevant requirements of the relevant funding body (including any requirements set out in any applicable rules such as any relevant performance management rules). The College also reserves the right to adjust any applicable subcontract profile where a subcontractor does not achieve any aspect of the relevant profile.

The College will not be under any obligation to make payment to the subcontractor in respect of any learners over and above any agreed upper limit on the number of learners or the maximum amount of funding allocated to the subcontractor.

The College's payment terms to subcontractors are 30 days from receipt of a valid invoice. Payments may be subject to clawback under the terms of the relevant subcontract upon certain types of default by the subcontractor (for under-delivery). Please refer to the Colleges website (URL) for further details of the College's related payment procedure.

## **7 Quality and Support**

7.1 The College will actively work with subcontractors to continuously improve and monitor the quality of the teaching and learning and assessment that they deliver and thereby ensure continuous improvement of the overall quality of teaching and learning for all College learners.

The College will provide timely and meaningful feedback to both the subcontractor and their delivery staff and where appropriate ensure that any related observations are incorporated into the College's moderation and standardisation process (in order for the improvement actions to impact both internal and subcontractor quality).

'Learner voice' surveys to gather feedback from learners, will be carried out throughout the duration of the subcontract.

The College will support its subcontractors in ensuring that they have appropriate policies and procedures in place to support the fulfilment by the College of its statutory and other legal obligations.

The College will support subcontractors to develop an effective Self-Assessment Report (SAR) and an effective Quality Improvement Plan (QIP) for incorporation into the College's own group SAR.

The College will offer to its subcontractors:

- Monthly contract management meetings
- Quality observations/support in line with The College's Quality Monitoring Cycle
- Professional training and development of relevant subcontractor staff
- Access to relevant learning resources and materials
- Participation in the College's observation of teaching and learning process
- Access to relevant in-house training delivered by the College
- Monitoring of initial guidance, assessment and delivery of learning programs

The College recognises its responsibility to support all subcontractors to develop, deliver and sustain high quality provision that meets the needs of the community and learners. The deducted fees referred to above are in part used directly to make available a comprehensive programme of support and compliance measures to ensure public funds are protected and used effectively.

## **8 Data Protection**

8.1 The College, its subcontractors and other partners need to comply with the Data Protection Act 2018 and UK GDPR. As the lead delivery organisation, the College will act as the Data Controller of any related personal data (e.g. in relation to learners). Each subcontractor will act as a data processor in respect of any personal data which they process in connection with their

services (and the College will ensure that the relevant subcontracting document includes UK GDPR-compliant data processing terms).

Each subcontractor needs to ensure that transmission of personal data (either to the College or to anybody else pursuant to the relevant subcontract) is undertaken on a secure basis. Any data breach must be reported to the College immediately on discovery.

## **9 Communication**

This policy will be routinely communicated to and discussed with current subcontractors as part of the contract review process.

This policy will also be communicated to potential subcontractors as part of the procurement process.

The policy is available on the DNCG staff intranet and website.

Any queries in relation to any part of this policy should be referred by email to [contracts.team@dncolleges.ac.uk](mailto:contracts.team@dncolleges.ac.uk)

## **10 Authorisation**

Policy Holder:	Chief Finance Officer
Approval Committee:	Senior Leadership Team
Approval Date:	27 July 2022
Next Review Date:	1 July 2023