



SUB-CONTRACTING / PARTNERSHIP ARRANGEMENTS - FEES & CHARGES Policy

Reference: GO_16

Policy: SUB-CONTRACTING / PARTNERSHIP ARRANGEMENTS - FEES
& CHARGES

Owned by: Chief Finance Officer

Approved by: Governing Body

Reviewed date: June 2025

Version: 1

Date of next review: July 2026

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SUB-CONTRACTING / PARTNERSHIP ARRANGEMENTS - FEES & CHARGES Policy

Context

It is a requirement for the College to publish a document explaining any fees and charges associated with sub-contractor or partner provision.

This is a mandatory requirement of the Department for Education (DfE).

The content of this document has been developed in line with the DfE funding rules and the College's strategic aims and objectives and is agreed by the colleges governing body.

Purpose of the document

The purpose of the document is to explain how the College ensures that it undertakes fair and transparent procurement processes and conducts robust due diligence procedures in selecting potential partners.

The College's aim in publishing this document is to ensure, as far as is reasonably practicable:

- The highest quality teaching, learning and assessment
- Compliance with DfE Funding rules
- Value for money and a positive impact on student experience

Our Rationale for Partnership working

Subcontracting will be reviewed and awarded annually, and must fulfil at least one of the following aims:

- 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.
- Offers an entry point for disadvantaged groups.
- Gives consideration for the impact on individuals who share protected characteristics, where there might otherwise be gaps

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

- Where the provision is in a vocational area that the College does not offer.
- Where the provision is aimed at engaging hard to reach or NEET learners.
- Where the provision meets the needs of residents and employers of York and immediate regional agencies.
- As a result of a collaborative bid where York College has been named as the lead provider.
- Establishing Strategic Partnerships enabling growth opportunities.

Partnerships with Community Trusts attached to football clubs are part of the rationale for subcontracting at York College on the basis that they allow the college to develop a network of similar organisations where good practice can be shared and a supportive partnership can be created.

The long standing relationship between the college and the English Football League Trust helps with ensuring that high-quality provision is delivered to students who would not otherwise engage in education through more mainstream providers (such as their local college) and whilst we maintain the focus of the partnership work to be about role in and around sport – opposed to the professional football route many programmes seek to promote – such partnerships allow us to support a reduction in the proportion of students who would otherwise be not in education, employment, or training (NEET) across the geographical areas we support.

Due Diligence

Prior to setting up a partnership contract, the College will carry out a robust due diligence process to assess the suitability of the potential partner. Checks will include but are not limited to:

- Financial Accounts / Credit Check Report
- Health and safety Policies
- Safeguarding and PREVENT Policies
- See examples of:
 - Learner Handbook
 - Induction Process
 - Enrolment paperwork

The College will assess the:

- range of provision/apprenticeships, workplace learning, distance learning etc.
- capacity to deliver
- previous track record/quality
- retention/success rates
- financial status of the partner

Fees and Charges

The standard College management fee for subcontracted partnership arrangements at York College is 20% of the income from the provision to be delivered. This percentage represents the expenditure that the College incurs in effectively identifying, selecting, and managing partner provision. It reflects the cost of managing the contract and monitoring the quality assurance activities.

The fee percentage agreed will cover any expenditure for funded activity that the College undertakes on behalf of the partner such as;

College Activity	% Indicative fee (may vary)	Contribution to high quality training	Explanation of how cost is proportionate to subcontracted training
Quality Monitoring	7%	Provides focus on quality of delivery.	Quality: Including observations supporting tutors with improvement/learner feedback and assessment reviews/learner walks/learner calls.
Compliance Support and Monitoring	3%	Provides ongoing compliance with funding rules and regulations with focus on learner progress and success/achievement.	Contract compliance Contracting
Data Processing and Operational Support	7%	Provides quality administrative support for enrolments, data submissions and achievements.	Enrolments/Achievements Monthly reports Management Support
Contract Management	3%	QPR meetings, support and event management	Contract Reviews Funding reports Performance management Managing Audits Partner review meetings

Further charges to cover additional costs may be added to the percentage agreed to cover the cost to the College of any additional support that the College considers necessary to

ensure the quality of teaching, learning and assessment and to secure high achievement rates of any partner provision, this may also include claw back due to under delivery of contract.

Additional costs will be re-calculated and negotiated each year at a contract renewal meeting, giving the partner an opportunity to re-negotiate their fees through continuous improvement.

This approach will allow the College to focus on support where and when it is needed, on a risk-based approach.

Some sub-contract partners may require bespoke provision, especially those who operate more of a collaboration with the college than a sub-contractor, and as such will have a detailed fees and charges appendix to their contract which will sit outside our standard management fees

Additional Support for Partners

The precise additional support given to each partner will be negotiated and agreed with the partner. This will be based on a 'risk based' approach and may include:

- Additional site visits
- Additional lesson observations
- More rigorous verification
- Additional tutor support

Quality Assurance (QA)

Partnership activity is a fundamental part of the College's provision. The quality of the provision will be monitored and managed through the existing College QA processes and procedures.

This policy positions subcontracted partner provision as a core part of the College activity to support continuous improvement in the quality of teaching, learning and assessment for both the College and its partner. This will be achieved through the sharing of effective practice, for example through the Self- Assessment Reporting process.

A variety of quality activities will be undertaken for example; monthly keep in touch meetings (KIT) including finances and profiling, monitoring and mystery calls.

DFE Guidance and Review on Subcontracting

The DFE Subcontracting Standard was a requirement for providers from 2022/23

The subcontracting standard provides a framework for the oversight and management of public funds, ensuring that these are used to best effect, to maximise the value of those funds to benefit the learner.

The framework will ensure that there is a clear and consistent approach for the contract management of sub-contractors by the College and that there are robust assurance review arrangements.

It will assist in mitigating the risk of:

- inadequate (contract) management of sub-contractors
- non-compliance with DFE funding rules by sub-contractors; and
- fraudulent and incorrect funding claims

Appendix 1 outlines the requirements from the Subcontracting Standard that the College is required to follow.

Disputes and resolutions

Where disputes between partners cannot be resolved through mutually agreed internal resolution procedures, the College will submit to independent outside arbitration or mediation and abide by its findings. Contract documents will be required by the College and the partner to agree that the achievements are attained. Signatories therefore commit that all discussions, communications, negotiations and actions undertaken to build, maintain and develop the partnership will be conducted in good faith.

Financial details and Invoicing

Payment terms and timing of payments in relation to invoicing.

Invoices will be paid in line with the individual partner's contract, i.e., an agreed payment schedule will be set up at the start of the contract with agreed dates identified. The College must receive valid invoices as per payment schedule and all payments will be made in accordance with the College's payment terms or payment terms agreed with the partner.

Value Added Tax (VAT)

The College is generally unable to recover any Value Added Tax charged. The maximum sum payable under this agreement, as set out in paragraph 1.2 of the Sub Contractors Contract Schedule, includes the cost of the service and any other VAT or taxes to be charged, where they apply.

NB - Under the provision of Item 5A to Group 6 of Schedule 9 of the VAT Act 1994, the supply of education or vocational training funded by the Education and Skills Funding Agency, and the supply by the person providing that education or vocational training, of any goods or services essential to that provision, is generally considered to be an exempt supply for VAT purposes by HM Revenue and Customs.

Following the introduction of loan-based funding for some students aged 24 and above this interpretation may be subject to a change or variation by HM Revenue and Customs.

Contingency Plans

A contingency plan safeguards learners in the event that a Partner withdraws from the arrangement or goes into liquidation or administration.

The Colleges contingency plan is outlined in Appendix 2.

Communication of the document and updates

This fees and charges document will be reviewed in each summer term and updated as required. It will be published on the College Web site by the 1st of August prior to the start of the academic year in which it will be applied. Effective communication will be imperative between the partners and the College to ensure the success of the contract and to ensure the student experience is of high quality.

Publishing of Data

Data on the actual level of funding paid and retained under each subcontractor partner arrangements will be published annually.

Appendix 1 – DFE Subcontracting standard

The following outlines the requirements of the DFE Subcontracting Standard.

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 DFE 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 sub-contractors has been established that will review the sub-contractor'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 sub-contractor 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 Executive Team.
- 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, DFE 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 Executive Team and published on the College website. These will only exceed 20% in exceptional circumstances, and it is recognised where they do, the DFE reserves the right to challenge.

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 board approval to the revised documents.
- 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 Executive Team 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.

3. People

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

- Business 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 DFE 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.

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.

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 sub-contractor's current ownership and person of significant control, notification will be made to DFE where this has changed from a previous year.
 - the sub-contractor'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.

6. Managing Performance

In order to meet the DFE'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 DFE'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 sub-contractors, with documented improvement plans agreed where necessary, covering both operational issues and adherence to key contractual requirements, for example, on data security.

7. Payments and Incentives

In order to meet the DFE'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. Risk Management

In order to meet the DFE'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.

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.

10. Provider Development

In order to develop relationships with sub-contractors that leads to improved 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.

Appendix 2 – Subcontracting Contingency Plan

Context

York College (the College) is a lead provider with a direct contractual relationship with the Education Skills and Funding Agency (DFE) and West Yorkshire Combined Authority (WYCA). The College recognises that subcontracting has an important role to play in delivering high-quality teaching and learning.

Terminology

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

A sub-contractor is an organisation that is engaged in a contractual and legally binding arrangement with one or more lead providers, to deliver education and training provision that the DFE funds via a lead provider.

Scope

This policy applies to all 'delivery subcontracting' activity undertaken by the College.

This policy applies to all provision where all or elements of the programme are delivered by an external organisation, but where overall responsibility is retained by the College.

Plan

The College will take steps to ensure that provision is made to preserve the continuity of the provision and that learners involved are able to complete their qualification and/or training to a high quality. The College's overall aim is to reduce the inconvenience to learners and maximise their achievement and learning outcome.

Following withdrawal from a contract the next step would be for senior managers to hold a planning meeting and determine the best way forward. The sub-contractor may also be invited to the planned

meeting. Learners are the responsibility of York College, and they would be the primary focus of any contingency plan.

The College will use the following plan:

- Informing the funding agency of withdrawal from the subcontracting arrangement.
- A review of learner progress and assessment.
- To ensure learners complete their learning and qualifications, going forward a decision would be made to identify the best delivery plan to ensure continuity of learning and minimise any disruption to learners. One of four possible routes will be identified as set out below:
 - The College would deliver the provision
 - The College would identify an existing sub-contractor with the capability and capacity to deliver the provision.
 - The College would engage with a new sub-contractor (subject to completion of the due diligence process) to deliver the provision.
 - As a last resort, if the College is unable to meet the needs of the learners through either direct delivery, using an existing sub-contractor or engaging with a new sub-contractor, it will work with the relevant funding bodies (DFE & WYCA) to identify an alternative provider to transfer the learners to.
- Informing and communicating plans to learners and to employers.
- Awarding Organisation.
 - The College will make contact with existing awarding organisation(s) to see if learners can be transferred to the College.
 - Ascertain whether existing work can be transferred to an alternative AO and APL applied.
 - The College will pay for any registration and certification costs that cannot be transferred from the outgoing sub-contractor's centre.
- Setting clear time scales for identified actions to be implemented.
- Recover and remove all Department (DFE) data held on systems and recover relevant documentation.
- Allocating key roles and responsibilities to college staff for implementing, monitoring, and reviewing the plan.