

# Subcontracting Policy 2023/2024 (excluding Apprenticeships)

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<b>Approving Body:</b> Corporation	<b>ELT contact:</b> Executive of Finance
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\*This procedure may need to be reviewed before the review date stated, to reflect changes in government and other agencies' advice, guidance and legislation

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## 1. Introduction

- 1.1 City College Plymouth (the 'College') is a leading provider of vocational, professional and technical training in the South West, that strives to provide a learning environment and organisational culture that impacts positively on the health, wellbeing and sustainability of our community, to enable all our students and staff to achieve their full potential.
- 1.2 The term 'College Community' includes all staff, governors, students, parents/carers, volunteers and visitors.

### **Our vision:**

- To be the learning destination of choice.

### **Our core values:**

- Respect
- Ownership
- Integrity

## 2. Scope

- 2.1 This paper sets out the current subcontracting arrangements which will underpin the budget and financial plan for the College, any variations to these current arrangements will be pre-approved by ELT and the Corporation and reflected in the policy.
- 2.2 The paper outlines the current ESFA requirements in respect of subcontracting. It should be read in conjunction with the Supply Chain Fees and Charges Policy 2023/2024.
- 2.3 Each Year this policy will be reviewed and renewed, including the rationale ahead of the financial year and will be signed off by those charged with overall responsibility. Once reviewed, the updated policy must be published by 31 October each year.
- 2.4 This policy is written from the most updated government documentation available, there needs to be an awareness that the government guidelines and standards could change in year; the College will need to adapt to these changes yet they may not be included in this current policy. The current reference documentation is: [Subcontracting funding rules](#) for the ESFA funded post 16 funding (excluding apprenticeship) 2022 to 2023, last updated 9th January 2023.

## 3. Policy Statement

- 3.1 The ESFA are looking to focus the oversight of the national approach to subcontracting across the sector. Their aims are to: strengthen the monitoring and improve the assessment of risk to identify problems earlier intervene more quickly and decisively; harmonise and clarify the rules and requirements across post-16 funding streams; reduce the overall volume of subcontracted activity in the sector; eliminate subcontracting that is undertaken for purely financial reasons whilst retaining subcontracting that meets niche or specialised needs, improves access and provides opportunities for disadvantaged learners.
- 3.2 These aims will assist in mitigating the risk of: inadequate (contract) management of subcontractors; non-compliance with ESFA funding rules by subcontractors; fraudulent and incorrect funding claims.
- 3.3 From the 2022 to 2023 funding year onwards subcontracting in any given funding stream may only be up to 25% of that funding stream unless the express permission of ESFA has been sought and granted via an exemption case. It is clear from the outset that the ESFA wishes to see a significant reduction in the overall volume of subcontracted delivery in the sector.

## 4. Definition

- 4.1 A subcontractor is defined as a separate legal entity that has an agreement with the College to deliver any element of the education and training for which we draw funding from the ESFA. A separate legal entity includes any companies owned by the College or part of a College group, other associated companies and sole traders. It also includes individuals who are self-employed or supplied by an

employment agency, unless those individuals are working under our direction and control, in the same way as our own employees.

## **5. Rationale**

- 5.1 The rationale of the subcontracting is to enhance the quality of our learner offer. We do not offer subcontracts to meet short term funding objectives. We ensure learners receive the best possible education and training. By subcontracting we enhance the opportunities available to learners, we use the subcontractor and their expertise to provide better access to facilities or to fill a gap in expertise or niche or expert provision. It enables learners to have better geographical access to their education and supports all learners who may be disadvantaged enter into education. Subcontracting will support individuals who share particular characteristics where otherwise there are gaps.

## **6. Policies for Subcontracting, Fees and Charges**

- 6.1 For each subcontract/agreement the College has, it must include the rationale for the subcontracting provision.
- 6.2 For each subcontract/agreement the College has, it must set out the full range of fees retained and charges that apply, including:
- Funding retained for quality assurance and oversight.
  - Funding retained for administrative functions such as data returns.
  - Funding retained for mandatory training delivered to subcontractor staff by the directly funded provided.
  - Clawback for under delivery or other reasons.
  - How you will determine that each cost claimed by a subcontractor is reasonable and proportionate to the delivery of their teaching or learning and how each cost contributes to delivering high quality learning.
- 6.3 The College's governing body and our accounting officer must agree to the policy for delivery.
- 6.4 The College uses qualified and senior staff to select subcontractors, they are experienced and qualified to make these decisions. The College only uses subcontractors for delivery provision if:
- Subcontractors are in line with the funding requirements of the ESFA
  - Contracts are actively managed.
  - The accounting officer determines the subcontractors as being of high quality and low risk to public funds.
  - There is a robust procedure in place to ensure subcontracting does not lead to the inadvertent funding of extremist organisations.
- 6.5 The College will inform the ESFA if the subcontractor goes into administration or liquidation. (This is a requirement to at least 31st December 2034.
- 6.6 It is the College's responsibility to ensure the subcontractors are aware of the requirement to:
- Maintain evidence and audit trail as required, and provide access to it, until at least 31st December 2034.
  - Comply with the European Social Fund cross-cutting themes guidance for sustainable development and equality programme guidance.
- 6.7 All contract documentation remains the property of the Secretary of State. If the subcontractor ceases trading, the College must recover all contract paperwork and reconcile any claims to ESFA against the recovered paperwork.
- 6.8 The ESFA has the right to require an explanation where the funding you have retained as your management fee for a subcontract exceeds 20% of the overall contract.

## **7. Selection and Procurement of Subcontractors**

- 7.1 The College has a responsibility to notify the ESFA about any circumstances which might lead to an actual or perceived conflict of interest. The College will not award the contract without written permission from the ESFA, and will keep all evidence relating to the actual or perceived conflict.
- 7.2 The College will not subcontract to any institute/organisation which is not permitted to recruit 16-18 year old learners and/or 19 to 25 year old high needs students without written permission from the ESFA.
- 7.3 The College will ensure that subcontracting will comply with current and relevant procurement regulations. Including, if relevant the Public Contracts Regulations 2015. The College will take legal advice, as necessary.
- 7.4 The College will ensure that we select subcontractor(s) fairly transparently and without discrimination and that potential subcontractors have sufficient capacity, quality and business standing to deliver the provision that is being subcontracted.

## **8. Due Diligence Requirements**

- 8.1 The College will carry out thorough due diligence checks when appointing delivery subcontractors and will continue to undertake and review these checks on an annual/ongoing basis with each of your delivery subcontractors.
- 8.2 The College Due Diligence checks will include:
  - A review of the circumstances and criteria which would consider subcontractors to be a high-risk provider, as a result the College will not consider a contract.
  - An assurance that the subcontractor has the financial ability to deliver the requirements of the subcontract. (If a subcontractor does not meet, or continue to meet, the minimum due diligence and financial health checks required we will suspend the right of the subcontractor to recruit new learners.)
- 8.3 The College will not contract with a brand new company who have yet to submit their first statutory accounts, unless they are able to thoroughly verify the new company's financial capability.
- 8.4 The College must consider the subcontracting credit rating. Where this is above average, the college will assure that the subcontractor is available to deliver the needs to the contract and manage the risks associated with the contract.
- 8.5 The College will not award or renew a subcontract to any organisation that has passed a resolution (or the court has made an order) to wind up or liquidate the company, or administrators have been appointed, or its statutory accounts are overdue.
- 8.6 The College should refer to the list of declared subcontractors to determine if a subcontractor that we intend to use or are using already holds subcontracts with other organisations.
- 8.7 The College must only award subcontracts to legal entities. If the entity is a registered company it must be recorded as 'active on the Companies House database. Subcontractors must register on the UK Register of learning Providers (UKRLP) and hold a valid reference number, in order to be eligible for funding.

## **9. Entering into a Subcontract**

- 9.1 The College will not make an artificial distinction or distortions when describing delivery arrangements in order to avoid the application of these rules.
- 9.2 The College will not engage in a subcontract provision not previously subcontracted. If the College is looking to engage new provision you must get ESFA written permission.
- 9.3 The College will not enter into any agreement for brokerage.
- 9.4 The College will not engage in any subcontract where we would require to fund a second level of subcontractor. We must have a direct subcontract, each subcontractor must have a direct subcontract with the College. This is to ensure that the college has clear and transparent accountability of the quality

of provision, proper and appropriate controls are in place, that value for money is achieved for the benefit of the student experience.

- 9.5 The College will ensure all learners are aware of the roles of the subcontractors and the College in supporting them through their learning journey.
- 9.6 If the College enters into a new partnership or subcontract the College will select subcontractors through an open, fair and transparent process. If the College adds a new subcontractor during the life of our contracts, we will submit an updated subcontractor declaration form.

## **10. Terms that must be included in contracts with Subcontractors**

- 10.1 Before any subcontractor starts delivery of the subcontracted provision, the subcontractor must have a legally binding written subcontract with the College.
- 10.2 The subcontract must entitle the College to exercise management controls over the subcontractor's activity including access by auditors appointed by either your organisation or ESFA.
- 10.3 The following paragraphs must be included in each subcontract:
- A list of all services the College will provide to the subcontractor and the associated costs for doing so.
  - A list of individually itemised, specific costs that the College will charge for managing the subcontractor and how these are reasonable and proportionate to the delivery of subcontracted provision.
  - Specific costs for quality monitoring activities and specific costs for any other support activities offered by the College to the subcontractor and how these contribute to the delivery of high-quality learning.
  - Reference to the College's delivery subcontracting policy, including our rationale for subcontracting and where it can be found on our website.
  - A requirement to give ESFA and any other person nominated in writing by ESFA, access to its premises and to all documents related to their subcontracted delivery.
  - A section that sets out what will happen if the subcontract ends for any reason to ensure that there is continuity of learning.
  - A requirement for the subcontractor to inform the College if evidence of irregular financial or delivery issues arise. This could include, but is not limited to: Non-delivery of training when funds have been paid; Sanctions imposed by an awarding organisation; Allegations of fraud; An inadequate Ofsted grade; Allegations or complaints by learners, staff members, or other relevant parties.
  - A requirement for the subcontractor to inform you of any changes which impact its ability to meet the due diligence or financial health/required standards with a clear statement that states the College may as a result be required to terminate the subcontract with them.
  - A section that enables the College to terminate the subcontract should our subcontractor fail to meet the required due diligence or financial health requirements/standards.
  - A section that enables the college to take appropriate action in line with the funding higher risk organisations policy, for only if we the college feel it is appropriate but also where the ESFA requires the college to take action.
- 10.4 The subcontractor must be under an obligation to provide you with ILR data so that your organisation's data returns to ESFA accurately reflect your subcontractor's delivery information.
- 10.5 The subcontractor must provide you with sufficient evidence to allow the college to:
- Assess its performance against Ofsted's common inspection framework.
  - Incorporate the evidence it provides you with into your self-assessment report; and
  - Make judgements and grades within our self-assessment reporting system.

- 10.6 The subcontractor must always have suitably qualified staff available to provide the education and training.
- 10.7 The subcontractor must not use ESFA funding to make bids for, or claims from, any European funding on its own behalf or on behalf of ESFA, including match funding for ESF projects.
- 10.8 The subcontractor must be bound by ESF clauses within our contract, even if the provision being subcontracted is not funded by the ESF.
- 10.9 The College should take legal advice in order to best incorporate the above provisions along with wider terms and conditions into our subcontracts.

## **11. Monitoring Subcontractors and Provision**

- 11.1 The College is responsible for the actions of its subcontractors connected to, or arising out of, the delivery of the subcontracted services. If a subcontractor fails to deliver, the College is responsible for making alternative arrangements for the delivery of education and training, protecting the audit trail, and/or repaying ESFA or ESF funding.
- 11.2 The College manages and monitors all subcontractors to ensure that high-quality delivery is taking place that meets the requirements of the contract entered into. The College must ensure safeguarding is rigorously policed.
- 11.3 It is not acceptable for any staff member with a direct or indirect financial interest in the subcontractor to undertake any management control activities. This includes signing time sheets or invoices, as well as organising and/or carrying out monitoring activity or visits to check the subcontractor delivery.
- 11.4 The College must carry out a regular and substantial programme of quality assurance checks on the education and training provided by subcontractors including spot checks and face to face interviews with staff and learners. The programme must:
- Include verifying that learners exist and meet the eligibility criteria for ESFA Funding.
  - Involve direct observation of initial guidance, assessment and delivery of learning programmes, training and/or direct observation of assessment.
  - The findings of your assurance checks must be consistent with your expectations and the subcontractor's records.
- 11.5 The prevent duty applies to subcontracted provision. It is the College's responsibility to ensure all statutory responsibilities associated with the delivery of education and safeguarding of students, is included in the subcontracting arrangements.
- 11.6 The College must monitor subcontracted learners to ensure they have full access to free funded education and training, including information about and access to, 16 to 19 bursary and other student support funding, information, advice, and guidance and learning support if required.
- 11.7 The College must ensure the subcontractor's evidence meets the requirements of the ESF funding rules and is maintained and is accessible until at least 31 December 2034.
- 11.8 Roll over clauses will be closely monitored by the College to ensure contracts are not automatically extended beyond the initially agreed termination date.

## **12. Subcontracting Reporting and External Audit Requirements**

- 12.1 The College must record subcontracted provision in line with the published guidance for the school census and the individualised learner record (ILR) data returns. This includes submitting a fully completed subcontractor declaration by the dates given to us by ESFA. This will be at least twice during the funding year.
- 12.2 The College must also update the subcontractor declaration if subcontracting arrangements change during the year. This is to be done via our MyESF account.
- 12.3 In accordance with your ESFA contract(s), the college must meet ESFA subcontracting standards as detailed in the [subcontracting standard guidance](#), if the aggregate total of all subcontractors delivering



ESFA funded provision on your behalf exceeds or is anticipated to exceed £100,000 in any single funding year. Whilst otherwise excluded from these rules, for the purposes of calculation of aggregate total of subcontractor delivery, we must include delivery of apprenticeships.

- 12.4 The College will use the [auditors' guidance](#) available to help with reporting accountants to understand ESFA's expectations in terms of reasonableness and proportionality. The auditors guidance explains the process as to how the standard will be achieved, provides examples of evidence requirements and expectations on what is required if the standard is not achieved.
- 12.5 The College must send a copy of the external auditor's final report including the action plan of agreed recommendations and assurance declaration via ESFA Document Exchange by 31 of July 2023. Further information can be found in the [Document Exchange user guide](#). ESFA will review this as part of our overall assurance arrangements.
- 12.6 If ESFA does not receive the auditor's report on the subcontracting standard by 31 July 2023, the college as the lead provider will be deemed as non-compliant if no subcontracting report on the subcontractor is provided by this date and funding may be affected/delayed.

### 13. ESFA 16 to 19 Annex

- 13.1 ESFA reserve the right to require an explanation where the funding the College has retained as a management fee for a subcontract exceeds 20% of the overall contract but offers little value.
- 13.2 For the avoidance of doubt, all ESFA funded provision, including enrichment, employment and pastoral (EEP) activity is a funded part of a study programme or T Level. Any provision that is provided by a third party is deemed as a subcontractor.
- 13.3 Where T Level providers are passing T Level Industry Placement Employer Incentive payments on to employers this ended in the year 2021/22. The College must complete and upload the employer declaration to the digital tool capturing this information, but do not need to also account for these in subcontractor declaration. This funding is not included as part of the programme funding allocated for T Levels.
- 13.4 **Controls over students, tutors, and provision** - The College must be able to demonstrate that all the following key controls are exercised:
- Enrol or reject learners as we would do if the learners were to be taught on our own site.
  - A learning agreement, signed by the learners at the time of enrolment; the agreement must reflect the outcome of initial guidance and assessment for an individual student and set out their study programme and any learning support to be provided.
  - Learners' eligibility for ESFA funding is confirmed through an enrolment form and/or learning agreement, which must include the College name and logo, signed at the start of their programme.
  - A learning programme and its means of delivery has been clearly specified by the College.
  - There are arrangements for assessing the progress of individual learners.
  - There are procedures in place for the College to regularly monitor the delivery of programmes provided.
- 13.5 **Subcontractors with contracts with multiple institutions.** The College must establish whether any of its subcontractors work with other directly funded ESFA lead providers. This is to ensure that the College is the only provider that is claiming ESFA funding for its learners. Learners must not be enrolled at more than one directly funded ESFA provider.
- 13.6 If learners are attending several different directly funded providers for different components of their programme of study, the lead provider must record all the components and indicate on the ILR which elements are delivered via subcontracting. (There is an exception to this when a learner is enrolled on a Diploma in Sporting Excellence in addition to their main study programme.)
- 13.7 **Distance subcontracted delivery.** Only in exceptional circumstances should the College make subcontracting arrangements for delivery outside the normal recruitment area. The College will seek approval to continue with or embark on new arrangements for distance subcontracting. If the College is



subcontracting at a distance, it must ensure the same level of monitoring, management, control, and safeguarding of learners.

- 13.8 **Whole programme subcontracting.** The College must seek approval to continue with or embark on new arrangements for whole programme subcontracting.
- 13.9 The College must not enter into a subcontract agreement with special schools for whole or partial provision where students are 19-25 years old.
- 13.10 When a subcontractor wants to appoint and work with a third party, which could include a sports club, it is the College as the provider who must have a direct contractual relationship with the third party and not the subcontractor. Third parties must not be appointed or managed by the subcontractor. There must be no financial transactions between a subcontractor and a third party. The College is responsible and must take steps to ensure that the third party has:
- Facilities that are safe, suitable, and fit for purpose.
  - Safeguarding arrangements that are robust and reviewed regularly, at least on an annual basis.
  - A clear understanding on what activities are suitable for and not suitable for ESFA funding.

## 14. Further information

- 14.1 If the College adds a new subcontractor during the life of a contract, an updated subcontractor declaration form must be submitted.
- 14.2 The Auditors' guidance has been reviewed and a monitoring system across the academic year is in place to meet the new monitoring standard set out in August 2022.
- 14.3 Templates of the certificate the College must return, as well as guidance and information on expectations can be found on GOV.UK webpage [providing external assurance on subcontracting controls](#).
- 14.4 The Register of Training Organisations (ROTO) was formally decommissioned on the 31st July 2021. For subcontractors who wish to deliver over £100k they previously had to be listed on ROTO. ESFA will establish what the interim measures will be until the externally assessed standard is introduced in 2022 to 2023.
- 14.5 **The College must meet ESFA subcontracting standards as detailed in the subcontracting standards guidance if the aggregate total of all subcontractors delivering ESFA funded provision exceeds or is anticipated to exceed £100,000 in any single funding year. Whilst otherwise excluded from these rules, for the purposes of calculation of the aggregate total of subcontractor delivery, the delivery of apprenticeships must be included.**

## 15. The College Approach to Subcontracting 2023/24

- 15.1 The College currently expects to contract with two subcontractors in 2023/24, both of which the College has worked with for a number of years:
- ATL – Subsidiary Company
  - Plymouth Argyle Football in the Community Trust
- 15.2 The College has prepared its annual supply chain fees and charges policy for approval by the Board having regard to the new requirements outlined by the ESFA.
- 15.3 It is confirmed:
- All subcontracting undertaken meets the strategic aims of the College centred on employability, enterprise, key strategic / sectoral priorities for the city and travel to learn area, are specifically sector work based academies addressing skills gaps and enhances the quality of our offer to learners. For example, One of our subcontracting providers provides a number of employability programmes (including work based academies) which are highly valued by Job Centre Plus and help address skills gaps, particularly in the Health & Social Care sector. The Sports subcontracting has a long

history of running education provision from the highly successful Football Scholarship Programme to foundation provision supporting NEETs to enter the world of work or further training.

- The College will only wish to work with partners that are of a high quality and low risk, as determined by the Due Diligence.
- The College has staff within its finance, legal and MIS teams with appropriate knowledge, skills and experience to successfully procure, contract with and manage subcontractors. A legally binding contract will be in place for subcontractors and includes requisite terms set out in the funding guidance; contracts are reviewed and renewed annually.
- Subcontractors are robustly managed and monitored to ensure that high-quality delivery is taking place that meets and is compliant with the specific funding requirements for each programme. The quality of the provision will be monitored and managed through the existing College Quality Assurance processes and procedures and compliance with all Quality Assurance processes is expected.
- Through the College's established systems and processes for PREVENT, robust procedures are in place to ensure that subcontracting does not lead to the inadvertent funding of extremist organisations.
- It is acknowledged that all learners who are provided with education and training under a subcontract remain College responsibility; no differentiation is made between funded learners or those with Advanced Learning Loans.
- Through the IAG process, any learners and employers supported through subcontracting arrangements are made aware of the respective roles and responsibilities of the College and the company.
- The College has contingency plans in place to support learners in the event of certain circumstances. These are well developed having previously provided support to ESFA and learners / employers when subcontracting arrangements between other organisations in our travel to learn area have failed. The College has received written thanks from ESFA for its work during those challenging times.
- The College does not use subcontracting to meet short-term funding objectives.

## 16. Subcontract Values 2023/2024

16.1 The Tender for the subcontracts is published and currently under review. At this point we cannot state who our subcontracting will be for 2024/2025. We will ensure that the process is fair and all practices are transparent and in line with ESFA regulations.

16.2 The estimated subcontract values for 2023/24 are as follows

### Potential Subcontractor

16-19	£533k
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AEB	£356k
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### Potential Subcontractor

16-18	£420,357
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As a % of the College total delivery/approval this equates to:

16-18	4.55%
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AEB	7.8%
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## 17. External Assurance

17.1 The College annually commissions an external assurance review of controls over subcontracting. This is undertaken by the external auditors. The full report and certificate is presented to the Audit Committee as well as being submitted to the ESFA before the 31st July 2024.

## 18. Glossary

Term	Definition
Brokerage	Means the provision by a third party of services, for a fee, to source subcontractors to provide the services on behalf of the contractor.
Distance subcontracted delivery	Means where the delivery location of the subcontractor is outside the lead provider's normal recruitment area.
Exemption case	Means the case submitted by the college to the department in accordance with paragraphs 29 to 31 of the subcontracting funding rules for permission to exceed the subcontracting threshold.
Funding year	Means a period of 12 months starting on 1 August and ending on 31 July.
Learners	Means any third party including any student, apprentice (under an apprenticeship), trainee or similar to whom the college is required to deliver any of the services.
<a href="#">List of declared subcontractors</a>	Means the register of subcontractors that hold contracts worth at least £100,000 in aggregate with one or more ESFA-funded providers of post-16 education and training services, including apprenticeships and traineeships as set out at: <a href="#">List of declared subcontractors</a> .
Prevent	Means the prevent strategy, published by the government in 2011, is part of our overall strategy to reduce the threat to the UK from terrorism by stopping people becoming terrorists or supporting terrorism.
Subcontract	An agreement entered into between ESFA lead provider and a subcontractor for the purposes of engaging the subcontractor to deliver part of the services on behalf of the lead provider.
Subcontracting	Any delivery to a learner's programme of learning by a separate legal entity. It does not matter if this is by a third party recruited to deliver on site (travel to teach), online learning or whether it is described as a service. 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, freelancers or employed by an agency.
Subcontracting threshold	25% of the learners in each funding stream under this contract in any given funding year.
Those charged with governance	Those with responsibility for overseeing the strategic direction of the provider and obligations related to the accountability of the provider. This includes overseeing the financial reporting process. Those charged with governance can include but are not limited to: College Governors/Boards, Executive Board of Directors, Audit Committee.
Whole programme subcontracting	Where every element of each individual learner's programme is delivered by the subcontractor.