



Best Practice Guidance for a Relationship between a Prime Provider and a Subcontractor

March 2018

Introduction

1. Subcontracting has become an integral element of the FE system. It has grown and evolved mainly because of changes to the funding system and policy development and, as such, little has been written on what good practice looks like. Therefore to fill this vacuum, AELP, Collab Group and HOLEX have worked together to produce a short good practice guide to support both the prime and subcontractor on the key principles of subcontracting.

Background

2. Although the FE system has always had an element of subcontracting, there has been various changes of policy that have increased activity; for example, the Skills Funding Agency's policy of minimum contracting levels for prime providers forced small prime contract holders to hand back their prime contract or transfer it to a large prime and become a subcontractor with no direct access to government funding. The ESFA procurement exercises for the partial procurement of the Adult Education Budget and non-levy apprenticeship funding have created similar circumstances where many providers now have to enter into a new prime and subcontracting relationship to have access to any funding.

Benefits of subcontracting

3. Without a doubt, subcontracting plays a vital part in the FE system for a number of reasons:
 - **Employer Choice:** A desire for large employers to work with one prime provider and that provider needing to subcontract to ensure coverage by level, sector, specialism and region.
 - **Provider Scope:** Not all providers can deliver the totality of the needs of an individual employer.
 - **Specialism:** Many specialist providers offer unique training and want to focus on the training and delivery aspect of the apprenticeship programme where they have most expertise, leaving the contract administration and back-office functions to larger experienced prime providers.
 - **Growing Quality Providers:** A desire for new providers to be supported in capacity building by an established provider, who can provide guidance and share best practice in the setup of their own infrastructure and business growth.

Challenges

4. Subcontracting comes with several challenges:
 - **Funding system:** Parts of the ESFA funding system do not provide sufficient flexibility to ensure that the supply side can fully meet the needs of the demand side.
 - **Timing and uncertainty of funding:** The challenge for some existing prime contracting providers to access enough funds directly from government at certain points of the year to meet the needs of the market.
 - **Lack of direct funding:** The challenge for providers to access funding directly from government.
 - **Primes enhanced accountabilities:** The requirement of the current funding rules for the prime provider to play a more significant role in both the delivery and the management of all their subcontracted provision.
 - **Reputational:** Reputational issues around 'top slicing' with the often perceived view that the management fee removes funds from learners.
 - **Lack of transparency:** Mistrust by subcontractors that primes can justify their cost.

Expectations of a prime provider

5. A prime-subcontractor relationship should not be solely a vehicle for accessing funding. It should be a tangible, healthy and collaborative partnership between the client, the prime provider and an eco-system of other suppliers focused on meeting the needs of the client – the employer and the learner.
6. From January 2018 all subcontracted apprenticeship delivery requires the prime provider to directly deliver "some of the apprenticeship training and/or on-programme assessment associated with each employer's apprenticeship programme." This partnership should be fair and transparent. We have produced a list of examples of best practice activity which the prime provider should be providing as part of their offer to their supply chain:

Quality Monitoring

7. The activities for monitoring and support will include quality visits, contract reviews and MIS meetings as standard. Unannounced visits and themed reviews may also take place at greater frequency. Through these activities, the prime provider evaluates, monitors and where necessary sets target improvements and/or risk-based intervention plans, including training/support for:
 - Progression and destination results
 - Equality & Diversity Impact Measures (EDIMs)
 - Learner and employer progress and timely success
 - Learner satisfaction
 - Quality of Teaching, Learning and Assessment
 - Support and training with CPD to improve their own quality infrastructure inclusive of observations of teaching and learning staff
 - Approach to learner's development in staying safe, Equality and Diversity, British Values

- Prevent Duty and wider employability skills
- Performance against delivery profile and employer requirements
- Audit compliance meets requirements of RoATP
- Policy review and support to enrich
- Company Director checks as part of due diligence at 6 month intervals.

Data and MI

8. Prime provider's MIS department schedules and holds monthly support and information exchange meetings with each delivery subcontractor including the following:
 - Past planned end date learners (PPED)
 - Learners on a break in learning (BIL)
 - Contact evidence submitted in a timely manner
 - Health and Safety vetting and insurances for the delivery partners' employers
 - Enrolment queries (extended to all paperwork submitted if need be).

Contracting / Contract Management

9. Ongoing profile updates are carried out and variations issued where necessary if profile cannot be met. This is determined through the quality and performance reviews that take place with each delivery partner. The prime provider supports subcontractors to continue to develop their provision; this could include but not be limited to:
 - Provision of a quality dashboard
 - Matrix accredited advice and guidance
 - New standards delivery support
 - Funding, MIS, audit and submission of data return guidance and training
 - Learner recruitment via NAS website
 - Learner voice strategies and improvement planning
 - Preparation for External Inspection
 - Generic and themed Quality Support and review
 - Safeguarding, British Values, Equality and Diversity and Prevent training and support
 - Access to staff development activities
 - Self-Assessment and Quality Improvement Support
 - Teaching and Learning Observations (Inc. paired observations)
 - Group sharing practice and development sessions.

Acceptable fees, charges and additional services

10. Quite rightly, everyone involved wants to maximise the proportion of funding being spent directly on training the learner to ensure that the quality of the training and experience of the individual learner is not negatively impacted. If prime providers carry out appropriately robust due diligence and adequately oversee the quality assurance of the subcontractor's delivery, rather than operating at arm's length, then poor practice and poor quality should be quickly eradicated and managed out of our FE ecosystem.

Recommendations

11. We are therefore recommending the following four approaches to subcontracting be adopted:

1. The core fee charged by the prime provider for legitimate management overheads for quality and contractual compliance aspects should be between 0% to 20% depending on what is provided and the extent of what is provided. The expectation is that it is capped at no greater than 20% and generally will be much less. The fee should be based on the funding provided for on-programme training and no other funding such as for EPA or residential costs should be included in the calculated fees.
2. The prime provider should operate a fee rate scale based on subcontractors achieving specific criteria in regards contractual performance, quality and assurance ratings. Subcontractors should be able to retain more of the funding provided on achieving these agree KPIs and this should be agreed as part of the prime-subcontractor contract.
3. For continued transparency and irrespective of the ESFA funding rules, prime providers should continue to publish their fees and charges in the public domain, i.e. on their website. They should also make available their rationale to their subcontractors.
4. If a prime provider feels that a potential subcontractor requires a significant amount of additional support which would cost over the 20% and therefore is very high risk, the prime provider should consider refraining from working with that subcontractor in the first instance until the latter can demonstrate a quality experience. Also vice versa; if a subcontractor feels that the management and reporting burden is too high and it would be absorbing costs that should be spent on learning, then it too should consider refraining from working with that prime provider.

This guidance should be read in conjunction with ESFA funding rules on subcontracting and is jointly supported by the following organisations:

- Association of Employment and Learning Providers (<https://www.aelp.org.uk/>)
- Collab Group (<http://www.collabgroup.co.uk/>)
- HOLEX (<http://holex.org.uk/>)

March 2018