

## **SUBCONTRACTING FEES AND CHARGES POLICY**

### **1. THE BUSINESS CASE**

#### **Scope**

City Gateway's Subcontracting Fees and Charges Policy apply to all subcontracted delivery provision supported with funds supplied by the Education and Skills Funding Agency (ESFA) or any successor organisation(s).

#### **Definition of Subcontracting**

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

A subcontractor is an organisation that is contracted by a prime to deliver provision on their behalf. They are subject to the same contractual requirements as the prime has with the ESFA and are in scope to be inspected by Ofsted as part of the prime's provision.

#### **Rationale**

City Gateway's mission:

"We serve people in communities most impacted by and economic inequality. We seek to transform those communities by improving individuals' life chances. We deliver programmes that enable positive, sustained outcomes in empowerment, education and employment."

City Gateway will subcontract delivery provision in support of its mission and the Mayor of London Skills for Londoners: A Skills and Adult Education Strategy for London, June 2018.

- Widen participation by providing access to or engagement with new customers
- Deliver a wide sector offer that responds to local and regional priorities

## 2. THE SELECTION PROCESS

### Legal Advice

City Gateway will take legal advice with regard to the impact of Public Contracts Regulations 2015 and subsequent directives, guidance, etc. on our recruitment of delivery subcontractors. This advice will be available for inspection by the ESFA upon request.

### Legal and Financial Status

City Gateway will only award contracts for delivery provision funded to legal entities. If the legal entity is a registered company it must be recorded as 'active' on the Companies House database.

We will not award a subcontract with any organisation if:

- It has an above average risk warning from a credit agency
- It has passed a resolution (or the court has made an order) to wind up or liquidate the company, or administrators have been appointed
- Their statutory accounts are overdue.

### The Tendering Process

The different forms of tendering are set out below, which will be held at appropriate times in the contract year.

<b>Stage</b>	<b>Open</b> (open to all providers)	<b>Selective</b> (open only to preferred providers; may be subject to EU regulations)	<b>Approach</b> (response to providers who have approached / requested subcontract; may be subject to EU regulations)
1	Identify need	Identify need	Identify need
2	Tender design specification	Tender design specification	Tender design specification
3	Produce tender	Produce tender	Produce tender
4	Publish tender	Send tender to preferred list of providers	Send to provider(s) who requested a subcontract
5	Receive tender bids	Receive tender bids	Receive tender bids
6	Assess bids	Assess bids	Assess bids
7	Decide on successful bid(s)	Decide on successful bid(s)	Decide on successful bid(s)
8	Inform bid organisation(s) of outcome	Inform bid organisation(s) of outcome	Inform bid organisation(s) of outcome
9	Complete tender process	Complete tender process	Complete tender process

Adapted from AELP, AoC, LSIS Supply Chain Management: A good practice guide for the post-16 skills sector

### **3. CAPACITY AND CAPABILITY**

#### **Internal Resource**

City Gateway will only use delivery subcontractors where:

- It has the knowledge, skills and experience to successfully procure, contract with and manage subcontractors and can evidence this with the CVs of relevant staff
- The governing body / board of directors and the accounting officer (senior person responsible) determine as being of high quality and low risk, and provide written evidence confirming this
- It has robust procedures to ensure subcontracting does not lead to inadvertent funding of extremist organisations.

#### **Due Diligence**

We will conduct due diligence checks prior to contract and have the process and the results available for inspection by the ESFA.

#### **Desk Top Due Diligence**

The following information is the first of a two part due diligence system and will form part of the tendering process.

- Organisation overview
- Legal and operational structure
- Details of directors
- Rationale for contract request
- Current offer
- Evidence of learner demand
- Added value to the sector and City Gateway
- Prescribed policies and procedures such as:
  - Health and Safety, including risk assessments
  - Safeguarding
  - Prevent
  - Equal Opportunities
  - Sustainability
  - Information Advice and Guidance (IAG)
  - Internal Quality Assurance (IQA)
  - Quality Assurance / Improvement (QAI)
  - Observation of Teaching Learning and Assessment (OTLA)
  - Accreditation of Prior Learning (APL)
  - Appeals Procedure
  - Complaints Procedure

- Performance Management
- Continuing Professional Development (CPD)
- Insurance policies
  - Employer liability
  - Public liability
  - Professional indemnity
- Evidence of Disability Discrimination Act (DDA) compliance
- Evidence of Data Protection compliance
- Financial health check, including copy of latest audited accounts
- Management Information System (MIS)
- Details of teaching / delivery staff
- Disclosure and Barring Service (DBS) checks for all relevant staff
- Details of Awarding Organisation (AO) accreditation and External Quality Assurance (EQA) reports
- Matrix accreditation – if not held to be achieved within six months of the commencement of the contract
- Performance management including retention, timely and overall achievement rates
- QAI systems
- Copy of latest Ofsted report(s) if previously inspected as a prime or a subcontractor
- Completed agency register where required
- Risk management register, including disaster recovery
- Trade references

### **Due Diligence Site Visit**

The due diligence site visit forms the second part of a two stage process. Prospective subcontractors will need to be successful in the first stage desk top due diligence, which forms an integral part of the tendering process, before being able to proceed to a post tender due diligence site visit. This will include the following.

- Onsite verification of information provided for stage one due diligence
- Assessment of capability and capacity
- Conducting a financial audit
- Interviewing the management team and a selection of staff
- Conducting Health, Safety, Safeguarding and Prevent assessments
- Conducting an Equal Opportunities assessment
- Identifying strengths, potential risks and development needs

### **Contract Decision**

Having completed due diligence there are three possible outcomes:

1. Contract not approved

2. Contract conditionally approved, due to areas of potential risk and / or requiring improvement
3. Contract unconditionally approved.

## **Contract**

The contract will meet the requirements set out in the current ESFA funding rules.

**City Gateway will not agree a contract where this requires the subcontractor to subcontract education and training to a second level.**

All subcontractors holding contracts with an overall value of £100,000 must be listed on the appropriate ESFA Register before City Gateway will enter into a subcontract with them.

The contract will include the following.

- Subcontractor volume and values
- Length of contract
- Subcontractor profiled volume, values, returns (to provide City Gateway with timely and accurate Individualised Learner Record (ILR) data by prescribed dates to enable effective and efficient management of subcontracted provision and our contractual relationship with the ESFA) and payment dates
- Invoicing and payment terms
- Staffing details professional qualifications, knowledge, experience and competence ( and undertake to always have suitably qualified staff available to provide the education and training funded through the subcontracted delivery provision)
- A requirement for all staff to have up to date and appropriate DBS checks and clearance to work in the sector
- Employer, public liability and professional indemnity insurances
- Evidence of Data Protection compliance
- Creation and maintenance of appropriate records including learner attendance
- Sharing of AO reports in a timely manner that relate in whole or part to subcontracted provision
- Allow access to the subcontractor's premises, all documents, learners, employers, staff and learning activity for the purposes of auditing and / or monitoring the quality of ESFA funded provision by City Gateway, the ESFA and appropriate third parties such as Ofsted, their successor bodies or any other party nominated by them for these purposes
- Advise City Gateway of any irregular delivery or financial activity arise, including but not limited to:
  - non-delivery of training when funds have been claimed or paid

- the outcome of any Ofsted inspection which they have been part of as a prime or a subcontractor, in particular an inadequate grade
- failure to retain, or conditional retention of, accreditation by third parties which form part of the contract between us and the subcontractor
- complaints or allegations by learners, people who work for you or other relevant parties
- Allegations of fraud
- Provide sufficient evidence to enable City Gateway to assess subcontracted delivery provision against Ofsted's Common Inspection Framework (CIF) and incorporate the evidence into our Self-assessment Report (SAR) to guide the judgements and grades within our SAR and inform our Quality Improvement Plan (QIP)
- Attend Continuing Professional Development (CPD) programmes arranged by City Gateway including standardisation meetings
- Ensure staff CPD is recorded and staff files are updated as required to ensure they accurately reflect current information on staff members
- Attend to under performance or irregularities in an effective and timely manner and, where considered appropriate by City Gateway, agree an action plan to remedy these within 4 weeks of City Gateway requesting this
- European Social Fund (ESF) clauses from our ESFA contract, even if the delivery provision we are subcontracting is not funded by the ESF
- Not to use subcontracted funding to make bids for, or claims from, any European funding on the subcontractor's behalf, our behalf or the ESFA
- Not use payments made as match funding for ESF co-financing projects
- Co-operate with City Gateway to ensure there is continuity of learning if the subcontract ends for any reason
- Prime contractor service charges based on due diligence
- Prime contractor support
- Variation of contract
- Breaches of contract, remedies, penalties and termination
- Resolution of disputes

#### **4. MANAGING SUBCONTRACTED PERFORMANCE**

City Gateway will manage and monitor subcontractors to ensure that high quality delivery is taking place and meets the ESFA funding rules.

Subcontractors will ensure that all learners are given inductions to their courses or programme. The induction given must be consistent with the standards specified in City Gateway guidance on the management and delivery of learner inductions.

All courses should include initial and diagnostic assessment at the appropriate level to enable learners and staff to identify what they want to achieve from the course. This process should ensure that:

- Learners have the necessary aptitudes, attributes and abilities to help them successfully complete the courses for which they are applying
- Any learning support needs are accurately identified
- Learners have the information they need to help them make well informed judgements about the relevance of their courses to their short and longer term employment and learning goals.

Any identified support needs will be fed back to City Gateway, who will approve the additional support and any extra cost involved. Subcontractors must have access to appropriate learner support arrangements.

Where appropriate the assessment should also gather necessary information about health and medical records, previous relevant experience; depending on the nature of the course itself and specifically where the nature of the course presents significant health and safety issues. City Gateway Health & Safety Policy and Procedures must be adhered to.

Tutors must maintain learner progress records at an appropriate level of detail in relation to the context and length of the course or programme. City Gateway documents provide the benchmark for the detail of records required.

All courses will have their content defined within a Scheme of Work (SoW) and their sessions will be planned using an appropriate lesson / session plan. Both of these should be consistent with the requirements defined in City Gateway Quality Assurance documents.

Subcontractors will register their learners with the appropriate examination boards within agreed timescales and abide by awarding body regulations. Subcontractors will maintain assessment and verification, and / or moderation arrangements that are consistent with the requirements of AOs.

Subcontractors must ensure that appropriate staff attends City Gateway best practice events and any training organised by City Gateway which has been put in place to address issues identified in quality or compliance post-audit action plans. Failure to attend such events will result in the organisation's risk assessment rating being increased. This action is likely to increase the frequency of quality and/or compliance audits undertaken. Other penalties may also be applied.

“Appropriate staff” is defined as individuals who have relevant managerial authority and responsibility for the subject being addressed through the training. The exception to this definition will be where training is designed for practitioners.

The management of subcontractor performance is based on level of approval and risk status. City Gateway will monitor, review and evaluate in order to inform

corrective, preventative and improvement actions and manage risk through contingency planning.

City Gateway will manage subcontractor performance on the basis of:

- Monitoring performance on a risk assessed basis;
- Assessing and reviewing outcomes with the subcontractor;
- Determining proportionate action to address any areas of concern or requiring development.

Monitoring of performance will include the following activities and timescales. Where risk is considered by City Gateway to be high then the frequency of monitoring activities will be increased and the subcontractor will be invoiced for these at a rate set out in the Contracting Fees and Charges section of the contract.

- The timeliness, error rate and frequency of errors on monthly data returns
- Performance against profiled starts, on programme payments, retention and achievement rates will be assessed every month
- Provision of AO reports, particularly External Quality Assurer (EQA) reports within 1 week of their receipt by the subcontractor
- Annual systems audit
- File audits will be conducted every 3 months to check that they are accurate and up to date including that learners exist, are eligible, are following an appropriate programme at an appropriate level, that training is taking place and the Guided Learning Hours (GLH) are recorded and of the required level, employer contributions are recorded where contractually required, etc.
- The quality of teaching and learning will be assessed every 3 months through:
  - Examination of learner portfolios
  - AO reports including IQA
  - Minutes of standardisation meetings
  - Observation of teaching, learning and assessment including paired observations which will include initial and diagnostic assessment, induction, planning training, on and off the job training and assessment involving 121 and group sessions and coherence across the on the job and off the job elements, provision of Information Advice and Guidance (IAG) and reviews
  - Discussions with staff, learners and employers to ensure that all parties are aware of the role and responsibilities of City Gateway and the subcontractor
- Ad hoc short notice visits that may focus on any particular aspect(s) of the subcontracted provision, e.g. the Learner Journey, Safeguarding, Prevent, etc.
- Annual employer and learner surveys conducted by the prime on behalf of the subcontractor

- Annual peer review
- Participation in the annual quality cycle including the production of City Gateway's SAR and QIP
- Attendance at CPD events including standardisation meetings throughout the year

City Gateway will ensure that it has a contingency plan in place for learners in the event that:

- We need to withdraw from a subcontract
- A subcontractor withdraws from the contract
- A subcontractor goes into administration or liquidation.

### **External Audit**

City Gateway will obtain an annual report from an external auditor where contracting with its delivery subcontractors exceeds £100,000 in any funding year. The report will:

- Provide assurance on the arrangements to manage and control our delivery subcontractors;
- Comply with ESFA guidance.

We will provide a certificate signed by our external auditor and an authorised signatory to confirm we have received a report that provides satisfactory assurance. A copy of the report, along with any implementation required by the external auditor as part of their report, will be available to the ESFA upon request as part of their compliance requirements.

## **5. CONTRACTING FEES AND CHARGES**

### **Communication of the Fees and Charges Policy**

City Gateway will communicate its Fees and Charges Policy in the following ways:

- On the City Gateway website, which will be prior to our entering into any subcontracting for the following funding year
- Through the due diligence process
- Part of the contract for subcontracted provision
- Discuss in monitoring, review and planning meetings with subcontractors.

### **Policy Review**

As a minimum City Gateway will review its' Fees and Charges Policy annually in June of each year unless factors, such as changes in ESFA contracts, require it to be reviewed within a shorter period of time.

## **The Management Fee and Support to Subcontractors**

Subcontracted providers will receive the following in return for the management fee of 15% to support delivery and quality improvement.

- Updates to changes in funding guidance
- Access to an appropriate MIS
- Quality assurance of paperwork prior to claiming funding
- Monthly upload reports
- Support with internal audit file to minimise risk of clawback
- Independent assessment and report of the quality of teaching and learning will be every 3 months
- Annual employer and learner surveys conducted by the prime on behalf of the subcontractor
- Minimum of quarterly management meetings
- Dedicated contract manager to provide dedicated support and guidance
- Annual peer review
- Participation in the annual quality cycle including the production of City Gateway's Self-Assessment Report (SAR) and Quality Improvement Plan (QIP)
- The opportunity to attend City Gateway CPD events including standardisation meetings throughout the year
- The opportunity to work with City Gateway on other projects

Where subcontractors require additional support this will be charged at the rate of £50 per hour and be agreed prior to work being undertaken by City Gateway or its nominated representatives. City Gateway will not subcontract with organisations it deems to be high risk.

## **Improving the Quality of Teaching and Learning**

The City Gateway Fees and Charges Policy will ensure that only high quality provision is publically funded. Contract management, quality audit and data interrogation will identify areas of improvement which will inform the training plan delivered annually by City Gateway for its subcontractors. City Gateway will continue to provide opportunities for high level training interventions, consultancy and capacity building activities to ensure that all providers improve the quality of their teaching and learning. Good practice in teaching and learning will be identified through observations of all aspects of the learner journey, employer and learner voice and peer reviews and will be shared through training, partnership meetings and conferences.

## **Timescales for Receiving Claims and Payment Terms**

Subcontractors are expected to submit ILR details accurately and in a timely manner. Enrolments for all funded programmes must be received within 10 working

days of the declared start date of the programme of study. Claims for Apprenticeships and Adult Education Budget (AEB) must be made periodically throughout the month and all paperwork and any error corrections must be received by City Gateway by the 25th of each month. Where submissions are not being submitted periodically throughout the month, the final submission date will be 20th of each month. Any evidence received after this date may not be processed until the following month unless there is written agreement from the City Gateway Contract Manager.

All submissions for Apprenticeships and AEB funding received within the timescales specified will be uploaded by City Gateway to the ESFA by the 4th working day of the following month. All submissions for 16 to 18 Programmes of Study and AEB based delivery will be uploaded at the standard upload points. However, providers are still expected to submit claims within 10 days of the programme of learning commencing.

### **Timing of Payments and Timescales for Paying Invoices**

Where subcontractors have submitted timely claims for Apprenticeships and AEB funding they will be paid monthly in areas based on actual start and will be paid within 30 days of the monthly upload by BACs transfer. Management fees will be deducted at source and payments will be made in line with ESFA payment methodology. The payment methodology for 16 to 18 Programmes of Study will be specified in the subcontractor contract.

If there are errors in audit of a sample of the evidence provided by the subcontractor to support the payments City Gateway reserves the right to recover from the subcontractor an amount based on the identified error rate.

If the funding money is withdrawn from City Gateway by the ESFA retrospectively the City Gateway reserves the right to withdraw funding from the subcontractor.

### **Contract Variation**

City Gateway will monitor the contract performance of the subcontractor to assess any likely shortfall in the use of the allocated amount, or conversely, if it appears that the allocation will be insufficient to meet the business needs of the subcontractor. City Gateway will agree a schedule of business with the subcontractor with termly assessment points. If the subcontractor has not used their termly allocation City Gateway reserves the right to amend their contract amount by the amount of shortfall and redistribute it where needed.

City Gateway will only increase a contract amount if it can afford to do so.

## **6. RISK MANAGEMENT**

All subcontracting will be for provision in the Greater London area thereby directly contributing to the education and skills needs of the region and reducing the risk associated with subcontracting provision at a geographical distance.

## Overall Score

1. In order to proceed to contract the applicant will need to score low or low with support in all categories.

Low Risk = total score of 5

Low Risk with support = total score of 6 – 10

High Risk = total score of 11 - 15

<p><b>Performance Indicators</b> If a category is non-measurable due to lack of evidence then it will be scored as high risk.</p>	<p><b>Risk Rating Score</b> <b>1 = Low</b> <b>2 = Low with support</b> <b>3 = High</b></p>
<p><b>Rationale</b></p> <ul style="list-style-type: none"> <li>01 Organisation overview</li> <li>02 Legal structure</li> <li>03 Operational structure</li> <li>04 Details of directors</li> <li>05 Rationale for contract request</li> <li>06 Current offer</li> <li>07 Evidence of learner demand</li> <li>08 Added value to the sector and City Gateway</li> </ul>	
<p><b>Financial Status</b></p> <ul style="list-style-type: none"> <li>01. Financial health check, including copy of latest audited accounts</li> </ul>	
<p><b>Policies, Procedures and Resources</b></p> <ul style="list-style-type: none"> <li>01. Health and Safety Policy and Procedures including relevant risk assessments</li> <li>02. Insurance Policies: <ul style="list-style-type: none"> <li>• Employer Liability</li> <li>• Public Liability</li> <li>• Professional Indemnity</li> </ul> </li> <li>03. Sustainability Policy and Procedures</li> <li>04. Safeguarding Policy and Procedures</li> <li>05. Prevent Policy and Procedures</li> <li>06. Equal Opportunities Policy and Procedures</li> <li>07. Evidence of DDA compliance</li> <li>08. Evidence of Data Protection compliance</li> <li>09. DBS checks on staff (do not provide information on individual staff)</li> <li>10. Information Advice and Guidance (IAG) Policy and Procedures</li> <li>11. Accreditation of Prior Learning (APL)</li> <li>12. Appeals Policy and Procedure</li> <li>13. Complaints Policy and Procedure</li> <li>14. MIS, e.g. PICS</li> <li>15. Quality Assurance / Improvement Policy and Procedures including Internal Quality Assurance (IQA) and Observation of Teaching, Learning and Assessment (OTLA)</li> <li>16. Staff Performance Management Policy and Procedure</li> </ul>	

<p>17. Continuing Professional Development (CPD) Policy, Procedure and Annual Review / Report</p> <p>18. Risk Register</p>	
<p><b>Experience</b></p> <p>01. Details of teaching / delivery staff</p> <p>02. Details of AO accreditation and EQA reports, etc</p> <p>03. Matrix accreditation – if not held please explain how you will achieve this within 6 months of the commencement of your contract</p> <p>04. Performance management retention and achievement rates over the last 3 years for funding programme bid for (where available) by:</p> <ul style="list-style-type: none"> <li>• Subject and Level</li> <li>• Sector</li> <li>• Organisation</li> </ul> <p>05. Copy of latest SAR and QIP</p> <p>06. Copy of latest Ofsted report if previously inspected as a prime or a subcontractor</p> <p>07. Confirm overall level of current subcontracting and currently on appropriate ESFA register if required</p> <p>08. Progression rates into:</p> <p>09. FHE</p> <p>10. Employment</p> <p>11. Trade references</p>	
<p><b>Proposed Contract</b></p> <p>01. Duration</p> <p>02. Value</p>	
<b>Total</b>	

<b>Title</b>	Subcontracting, Fees and Charges Policy
<b>Sub title</b>	AEB subcontracting
<b>Owner</b>	Finance Manager
<b>Issue date</b>	13/10/2018
<b>Revised Ref</b>	Revision Issued
25/11/2019	Minor amends following Mazars feedback