

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2371

Title: Adult Education Budget Procured Provision Delivery Arrangements

Executive Summary:

This MD builds on MD2255, under cover of which the Mayor approved his acceptance of the delegation to him of certain functions relating to the Adult Education Budget (AEB) for London, subject to meeting a series of principles set out in the delegation arrangement, agreed by the GLA and the Department for Education (DfE). It should be read in conjunction with MD2370, which sets out proposals for the delivery of the AEB grant provision.

From August 2019, the Mayor will be responsible for the commissioning, delivery and management of London's AEB allocation, circa £311 million per annum. This MD seeks the Mayor's approval of the GLA's proposals for the competitive procurement of services with a value of approximately £130 million (potentially increasing to up to £200 million) over four years. It is proposed that this AEB procured provision will also be used as match funding to draw down £71 million of London's European Social Fund (ESF) allocation. This MD also seeks approval of the GLA's proposed approach to performance management and delivery arrangements for the AEB procured provision following devolution of the AEB budget in academic year 2019/20.

Decision:

That the Mayor approves the:

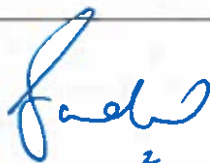
1. proposed approach to the procurement of services required for the discharge of delegated AEB functions in London, the proposed maximum and minimum thresholds for bids and a one-stage process that combines the Standard Selection Questionnaire (SSQ) and Invitation to Tender (ITT);
2. GLA's expenditure of up to £40,000 for external support with the procurement process for the AEB procured and AEB ESF programme, the costs of which, it is proposed, will be reclaimed from European Social Funding; and
3. proposed approach to managing the AEB services procured.

Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature:



Date:

22/10/18

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1. Introduction and background

- 1.1. This MD focusses on delivery arrangements for the discharge of delegated Adult Education Budget (AEB) functions in London by way of the procurement and management of services (separate arrangements are proposed for the award of AEB grant funding). This builds on MD2255 under cover of which the Mayor approved the acceptance of delegation to him of AEB- functions in London from the 2019/20 academic year (1 August 2019 to July 2020). It should also be read in conjunction with MD2370 which seeks approval of proposals for the approach to be taken to the award of AEB grant funding.
- 1.2. As part of the AEB delegation deal, the GLA must meet six readiness conditions to demonstrate to the Secretary of State (SoS) including maintaining stability of the provider base and protection of the public interest through achieving value for money.
- 1.3. The GLA intends to procure services facilitative of and conducive to the Mayor's discharge of the delegated AEB functions in London with a value of approximately £130 million (potentially increasing to up to £200 million) over four years.
- 1.4. It is proposed that approximately £71 million of this procured AEB service provision will provide match funding to enable the draw down of ESF of a separate £71 million AEB-ESF programme. The remaining £59 million of AEB procured delivery will act as a "reserve". In order to utilise ESF funding as a contribution to the costs of AEB service provision those services must be procured and managed in an ESF-compliant manner.
- 1.5. It is proposed that the AEB funding to be made available and used as match for ESF is less than the total £130 million of procured AEB for two main reasons: (a) the AEB providers are less accustomed to meeting ESF requirements, so some AEB activities and outcomes may not be ESF-compliant; and (b) to mitigate risks of AEB funding underspend (service provision being less susceptible to this). The "reserve" of £59 million will offset these risks by providing a pool of additional ESF-eligible participants if required. In addition, there are minor differences between the AEB and ESF requirements (e.g. ESF does not fund vocational support for some asylum seekers) but the GLA would nonetheless like to support these learners or activities. The reserve will enable providers to deliver a limited amount of activities which are eligible for AEB but not ESF.
- 1.6. The final AEB allocation will not be confirmed by the Department for Education (DfE) until January 2019. This is later than the proposed deadline for the AEB services tender submissions and the final budget for AEB procured provision cannot be confirmed until after this. All current indications are that the budget for the AEB procured provision will be in the region of £130 million over four years, but to ensure that the GLA has the flexibility within the procurement process to enable it to award contracts for a greater or lesser amount of AEB procured provision depending on the final London AEB allocation, the procurement documentation will refer to the budget as being up to £50m per year. It is estimated however, that actual expenditure will be in the region of £32.5m.
- 1.7. The AEB Mayoral Board considered the draft procurement documentation and approved the substantive policy content of the same on 19 September 2018 (report attached at Appendix A). The final versions of these documents will be circulated to the board before issue. As part of the finalisation of procurement documents, it was necessary to update the proposed approach endorsed by the AEB Mayoral Board in two specific areas following legal and procurement advice. The changes to these areas are set out at Appendix B to this report and will be circulated to the AEB Mayoral Board for information prior to the procurement launch.

2. Objectives and expected outcomes

- 2.1 This MD sets out the approach proposed for the management of the delivery of the procured AEB service provision and the procurement process that will be undertaken, which in summary involves the:
- 2.1.1 procurement of AEB services using the “Light Touch Regime (LTR)” under the Public Contracts Regulations 2015, utilising certain maximum and minimum thresholds for bids and a one-stage process that combines Standard Selection Questionnaire (SSQ) and Invitation to Tender (ITT) submission;
 - 2.1.2 adoption of a contract management approach which aligns closely with the sector’s current performance management process, allowing GLA officers to develop strong relationships with the provider base and gather intelligence on performance and delivery whilst not being overly disruptive for the sector. The proposed approach also aligns closely with the current approach taken by the GLA in discharging its duties as an ESF Co-Financing Organisation (CFO) to facilitate ESF compliance;
 - 2.1.3 GLA undertaking due diligence activity on the financial health of organisations recommended for contract award to identify suitably robust service providers.
 - 2.1.4 GLA conducting ongoing provider performance management, including regular monitoring and reviews and intervention actions tailored to the specific delivery circumstances as required, subject to agreeing a final service offer with Ofsted. This approach aligns with the ESFA’s intervention process but will be managed on a case-by-case basis, by the GLA, rather than a separate intervention team;
 - 2.1.5 consideration and making of payments, subject to the submission of Funding Claims and the Earning Adjustment Statement (EAS), increases and reductions in contract values and reconciliation, which is similar to the ESFA’s current practice and reflects the GLA’s data sharing agreement with the ESFA. Note that AEB procured providers will need to submit ESF Supplementary Data to report management information to support their claims, similar to current ESFA practice;
 - 2.1.6 reporting of AEB procured match funding, outputs and results to the Department for Work and Pensions (DWP) for ESF claims after year-end reconciliations. This is in order to minimise the risk of claiming from the DWP for learners or results which are later deducted from the provider claim, leading to potential irregularities and clawback of funding at audit. This is similar to the ESFA’s current practice;
 - 2.1.7 requirement for providers to seek approval for any changes to subcontracting arrangements after a contract is awarded and a proposed cap of 20% on management fees for AEB procured provision (to provide visibility of the supply chain for compliance and value for money purposes); and
 - 2.1.8 GLA mandating certain Qualification Achievement Rates (QAR) & Minimum Standards in AEB service provision. This is set out in the appendix to the AEB Grant Management MD (MD2370).

It should be noted that the GLA’s preferred position on audit, subject to agreeing a service offer with the ESFA, is to endorse the monitoring measures and audit requirements to ensure ESF compliance. These will include the submission of evidence with the periodic claims and a systems and file audit on a quarterly basis.

- 2.2 **Management approach for delivery of procured provision:** AEB funding recipient and provider management arrangements cover a vast breadth of process-driven elements which define the overall contract management processes for the GLA AEB Grant/Procured Programme.
- 2.3 *Performance Management* - Due to the complexity of existing ESFA processes and the need to maintain provider stability, initially the GLA proposes minimal changes to the current system operated by ESFA but will:

- 2.3.1 introduce a dedicated Provider Manager who will undertake regular reviews to discuss actual outputs and outcomes and funding claimed against profiles; and
 - 2.3.2 allow service providers who are delivering well against their contracted performance targets to request additional funding, which the GLA may approve dependant on availability of funds and the providers' capability and capacity to deliver the outputs/outcomes.
- 2.4 *Financial Health and Due Diligence* – the ESFA will continue to conduct annual financial health checks on providers who hold contracts or grants directly with them as well as the GLA. During the procurement process for the AEB procured provision and following scoring and moderation, the GLA will undertake financial due diligence on all organisations recommended for a contract award (Local Authorities will be exempted from this process). The GLA may also conduct a due diligence check on subcontractors whom service providers are placing significant reliance in delivery of the AEB procured provision, although it is expected that the sole delivery partner will ensure that those that they sub-contract are financially sound. During delivery of the services, the ESFA will continue to undertake annual financial health checks on providers who hold contracts for services or grants directly with them. For those providers who do not hold contracts with the ESFA, GLA Finance will take a risk-based approach to financial health checks, undertaking due diligence checks as and when concerns are identified by the GLA Provider Manager.
- 2.5 *Intervention*: the ESFA currently provide a formal and informal intervention process on provider underperformance. The GLA's approach assumes that Ofsted will continue to inspect the GLA's AEB procured providers, including those who do not hold other ESFA contracts or grants.
- 2.5.1 GLA Provider Managers will manage, on average between 7-10 grants providers, AEB procured service providers and AEB-ESF service providers. They will develop detailed knowledge of provision and skills needs at a local level as well as an understanding of provider delivery and management methodologies.
 - 2.5.2 Regular reviews, monitoring and provider visits, will enable Provider Managers to identify underperformance against contract targets early. A performance or quality issue requiring intervention may also be identified via an Ofsted inspection. The Provider Manager will agree coordinated intervention and action planning to recover the provider's position, building on the Provider Manager's knowledge of both the provider and the local situation.
 - 2.5.3 Collaboration between the GLA and ESFA will take place to identify additional special measures to share risk indicators/practice to drive performance.
- 2.6 *Audit* – the GLA's preferred position is to enter into an agreement for the ESFA to audit GLA FE College and AEB grant funded and procured service provision as part of their provision of audits. This option would reduce the audit burden for FE Colleges, and other providers who hold other ESFA grants or contracts, as it would avoid them being audited separately for different streams of funding.
- 2.6.1 GLA officers are unable to develop the preferred option as the ESFA have not sent their proposal regarding audit which was expected mid-August. The GLA's internal auditors (MOPAC) are actively involved with AEB devolution and have produced a draft Terms of Reference which sets out the role of Internal Audit in terms of processes to be established. This plan will be reviewed as part of the 2019/20 audit plan.
 - 2.6.2 All AEB procured provision will be subject to compliance checks by the GLA every quarter on a minimum 10% sample of learner files, plus additional delivery documentation. Additionally, contracted providers will be required to submit certified scanned evidence to support payments through an online secure portal. This process has been established to mitigate significant financial penalties for the GLA arising from non-compliance in relation to retention of ESF evidence.
 - 2.6.3 The GLA will not require an external audit of expenditure for non-FE College AEB procured providers as funding is paid on delivery of outputs and funding rates have already been subject to an assessment of costs and a test for value for money by ESFA at a national level.

- 2.6.4 For FE Colleges, the ESFA requires accounts to be prepared in accordance with their directions, externally audited and shared with the ESFA; it is proposed that these should also be shared with the GLA.
- 2.6.5 Following agreement with ESFA on the approach to audit, the GLA will develop audit guidance which will set out expectations for AEB procured and grant provision.
- 2.6.6 In addition to GLA compliance checks and ESFA audits, AEB procured service provision will be subject to the ESF audit regime, which includes regular audits by the GLA's European Programmes Management Unit, acting on behalf of the ESF Managing Authority, DWP, and the ESF Audit Authority, as well as possible audits by the National Audit Office, the European Commission, the European Court of Auditors, or other bodies on behalf of DWP or the European Commission.
- 2.7 *Payment Approaches* - the payment approaches used by the ESFA are described with the underpinning contract management approach for AEB procured in greater detail in MD2370. In summary;
- 2.7.1 The GLA is proposing to adopt the ESFA's approach to payment for AEB procured provision in 2019-20 subject to agreement of a data sharing protocol with the ESFA.
- 2.7.2 The GLA Provider Manager may agree to an increase in contract value based on a Provider's performance to date and their capacity and capability to deliver additional outputs and outcomes. Subject to consideration and approval by the GLA Provider Manager and budget availability, the contract value may be increased by up to a maximum of 10% of the original contract value. Such payments may take the total of an award over the maximum lifetime contract value of £10 million on any one contract. Reallocation of funding between providers for under/overperformance will enable the GLA to manage risks at programme level and help to ensure that the ESF targets can be met at a Priority level.
- 2.8 *Subcontracting*: broadly, the GLA's approach to subcontracting will be the same as the ESFA's. However, to satisfy value for money, the GLA is proposing:
- 2.8.1 that GLA approval will be required for any changes to subcontracting after contracting award; and
- 2.8.2 having a 20% cap on subcontracting management fees for AEB procured providers, unless a provider can demonstrate a robust reason for this cap to be exceeded.
- 2.9 External support with procurement is required on the development of the new £71 million AEB-ESF programme due to there being insufficient resources within the Skills and Employment team to cover the AEB-ESF work in addition to the work required on the development and procurement of the AEB procured and AEB grant-funding programme, taking into account the tight timeframe for the launch of the AEB and the ESF procurement rounds in October 2018 in order to meet the required AEB Go-Live date of 1 August 2019.
- 2.9.1 The support to be provided includes:
- initial scoping work and review of the AEB-ESF programme Commissioning and Specification Templates;
 - working alongside the Skills and Employment Team to develop and produce final versions of the specifications and other documentation to be published as part of the procurement (including the ITT, Contract Notice, Scoring Criteria, Application forms, Outcomes and Evidence Handbook and Delivery Partner Handbook); and
 - management of one or more information workshops to provide information to bidders following the launch of the AEB procured and AEB-ESF procurements
- 2.9.2 Expenditure of £10,000 was approved on 17 August 2018 under cover of a Delegated Authority Record (DAR). This expenditure was required to cover scoping work (4.5 days, £2,025+VAT) and work on the commissioning templates and specifications (14 days, £7,700

+VAT). The DAR noted that the budget requirement for the further phases of this work would be confirmed after the scoping phase was complete. The revised budget request is for an additional 18 days (£9,900+VAT) to undertake the work on the other procurement documentation. It is estimated that up to a further £20,000 will be required to undertake the remaining work on the Procurement documents, to organise, facilitate and evaluate bidder information workshops during the procurement phase and to pay for any costs associated with venue hire, administration and catering for these workshops.

- 2.9.3 100% of the costs are eligible to be reimbursed as part of the AEB-ESF management and administration costs. The match funding for this ESF expenditure is covered by the delivery of the £130 million AEB procured provision: additional AEB funding is not required.

3. Equality comments

- 3.1 Section 149(1) of the Equality Act 2010 provides that, in the exercise of their functions, public authorities – of whom the Mayor is one – must have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Relevant protected characteristics are age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- 3.2 The Mayor is required to comply with the duty to have due regard detailed above in making any decisions relating to the AEB.
- 3.3 Contractual agreements with delivery partners for this programme will require them to comply with all applicable existing and future equal opportunities laws, regulations and guidance, and GLA guidance in relation to race, nationality, ethnicity, disability, gender, sexual orientation, age, religion or belief.
- 3.4 The AEB procured provision will support a range of people who need skills and training to access and progress in work, including those at a particular disadvantage in the labour market such as people with no basic skills, those who are long-term unemployed, lone parents, people from black and minority ethnic backgrounds, people with disabilities and people in low paid or low skilled jobs.
- 3.5 GLA officers will periodically monitor successful projects to verify that equalities policies, procedures and processes are understood and applied by staff and project participants; that they are being monitored and reviewed; and that any underperformance against agreed equalities targets is being investigated and relevant mitigation actions are being taken.

4. Issues for consideration

- 4.1 For AEB procured projects the expectation is that in 2019-20 the GLA will broadly follow the same timescales and business cycle as the ESFA and the GLA/ESFA will mutually exchange information on the provider base. This limits options available to the GLA contract management process.
- 4.2 The GLA is heavily dependent on the ESFA providing data to it in a timely fashion. An agreement on data sharing currently forms part of the Memorandum of Understanding between the Mayor and Secretary of State for Education and a data sharing protocol which is close to being finished. Until such agreement is reached, the GLA is at risk of not receiving the information required to adequately manage AEB contracts.

- 4.3 It is still unclear how funding will be received from the DfE to the GLA for AEB delegation. An annual funding receipt in advance would provide the GLA with greatest ability to manage funding allocations through monitoring and financial returns. If the funding is drawn down by deferred payments from the Government, there is an increased risk of unreliability and dependency on providers and the ESFA for accurate data returns.
- 4.4 Key changes for subcontractors include capping of fees at a 20% rate. Subcontractors will be approved during the procurement process and will be assessed as part of the bid and changes to subcontracting are required to be notified to the GLA in advance of award. This has not been universally accepted by providers, some of whom feel this process change may impact on their ability to independently and flexibly decide on the spend of their AEB allocation and could delay subcontracting decisions which could result in underperformance.
- 4.5 As the ESFA deliver a number of large national programmes, they are able to select providers to use as ESF match funding. The GLA will have a much smaller pool of providers which will require all procured providers to be ESF compliant and will therefore require closer monitoring of the providers than they have previously been accustomed to.

5 Risks

- 5.1 *Lack of consultation with the sector.* Various tactics have been employed to communicate developments including Early Market Engagement exercises. A Prior Information Notice will be published in September 2018 setting out the GLA's intentions to purchase. In addition, one or more information workshops will be held following publication of the Contract Notice and bidders will be able to raise questions during the open tender period via the ProContract System.
- 5.2 *Contract Managements system process heavily reliant on agreed access to data from ESFA.* Risk to be minimised by collaborative dialogue with ESFA via a Memorandum of Understanding and data sharing protocols at development and delivery and stages.
- 5.3 *Risk of prime delivery provider underperformance due to delayed approvals of subcontracting change requests.* The GLA will develop systems that allow for timely and speedy assessment of subcontracting approvals.
- 5.4 *AEB procured contracts do not deliver sufficient ESF eligible outcomes or are destabilised by DfE's Intervention Regime, resulting in a shortfall of ESF eligible match.* Risk largely mitigated by the allocation method and by over procuring AEB provision that we intend to use as ESF match funding to provide a 'reserve' of approximately £59m.
- 5.5 *Provider non-compliance with ESF regulations resulting in ESF irregularities.* Contracts will contain express provisions providing the GLA with rights that it may exercise to mitigate ESF funding risks and providers will be given clear guidance and training during onboarding and follow up contract management monitoring visits to identify issues early and rectify any problems arising.

6 Financial comments

- 6.1 From August 2019, the Mayor will be responsible for the commissioning, delivery and management of London's AEB allocation, circa £311 million per annum. Approximately £130m of this allocation will be utilised on competitive procurement programmes over a period of up to four years, which will potentially increase to £200m. The balance of which will be funded via a drawdown of London's allocation of European Social Funding over the same period (up to £71m).
- 6.2 To support the AEB-ESF element of the procurement process, external support will be commissioned for up to the value of £40,000. These costs will be reclaimed from the European Social Fund on evidence of defrayed expenditure.

- 6.3 The recommended approach for performance management and delivery arrangements for the AEB procured provision sets out a framework of good governance, ensuring that the AEB procured provision is administered in a fair and transparent way in- line with the Authority's Financial Regulations, Contracts & Funding Code and complies with the ESF audit regime, thus trying to minimise any financial risk associated with the subsequent contract awards (either via non-compliance or under performance during project delivery).
- 6.4 As per MD2370, the Financial Due Diligence will be risk based with the aim of managing financial risk effectively and efficiently during the period of delivery, thus providing the platform to maximise the potential for successful delivery by the delivery partner.
- 6.5 The recommended approach will be closely monitored, with any future changes being subject to further approval via the Authority's decision-making process.

7. Legal comments

- 7.1 Section 39A of the Greater London Authority Act 1999 permits the delegation of ministerial functions to the Mayor, subject to certain limitations and conditions. This forms the basis for the proposed delegation of AEB functions from the Secretary of State for Education to the Mayor. A particular and onerous limitation of a delegation under s39A is that the usual power of delegation by the Mayor is not available in respect of s39A delegated functions.
- 7.2 In taking the decision requested, the Mayor must have due regard to the Public Sector Equality Duty under section 149 of the Equality Act 2010. To this end, the Mayor should have particular regard to section 3 (above) of this report.
- 7.3 Should the Mayor be minded to make the decisions sought officers must:
 - 7.3.1 exercise care in incurring of committing to any expenditure in reliance of delegated AEB before the grant of the same has been made, including liaison with the Department of Education to ensure that the funding may be claimed in respect of expenditure proposed;
 - 7.3.2 to the degree that reliance is to be placed upon access to and the use of ESF funding, that they liaise closely with the GLA's European Programmes Management Unit to ensure that such use is ESF compliant; and
 - 7.3.3 ensure that the services required are procured in accordance with the Public Contracts Regulations 2015, the GLA's Contracts and Funding Code and all ESF requirements working with TfL Commercial to ensure appropriate procurement documentation to seek bids for the services and contract documentation is put in place and executed by the proposed providers and the GLA before the commencement of such services.

8 Planned delivery approach and next steps

Activity	Timeline
Procurement of contracts (including scoring, moderation and internal approvals)	October 2018 to April 2019
Announcement of contracts awarded	May-June 2019
Contract signing, On-boarding, mobilisation	June-July 2019
Delivery Start Date	1 st August 2019
Delivery End Date	31 st July 2023
Final data and claims submitted	31 st August 2023

Appendices and supporting papers:

Appendix A – AEB Procurement Approach – report to the AEB Mayoral Board

Appendix B – Table of changes to the approach to AEB Procurement arising from the finalisation of documentation (Part 2)

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after approval or on the defer date.

Part 1 Deferral:

Is the publication of Part 1 of this approval to be deferred? Yes

If YES, for what reason:

This MD sets out a procurement strategy and estimated expenditure figures and therefore the publication of this paper and appendices should be deferred until the procurement process has concluded.

Until what date: 1 August 2019 (after the procurement process has been completed)

Part 2 Confidentiality: Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form – Yes

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer:

Nabeel Khan / Chris Wright has drafted this report in accordance with GLA procedures and confirms the following:

✓

Sponsoring Director:

Lucy Owen has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

Mayoral Adviser:

Jules Pipe has been consulted about the proposal and agrees the recommendations.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

Corporate Investment Board

This decision was agreed by the Corporate Investment Board on the 1 October 2018.

EXECUTIVE DIRECTOR, RESOURCES:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature

[Handwritten Signature]
TOM MIDDLETON ON BEHALF OF MAYOR CLARKE

Date

18.10.18

CHIEF OF STAFF:

I am satisfied that this is an appropriate request to be submitted to the Mayor

Signature

[Handwritten Signature]

Date

19/10/2018.