

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2544

Title: AEB Audit Services and AEB-ESF Compliance Checks

Executive Summary:

From August 2019, the commissioning, delivery and management of London's Adult Education Budget (AEB) allocation was delegated to the Mayor by the Secretary of State for Education. The AEB Procured Programme provides match-funding for the GLA's ESF 2019-23 programme, and both programmes are required to comply with the European Social Fund (ESF) eligibility requirements.

The Mayor previously approved an audit approach (MD2499) which requires all AEB grant funded provision (other than local authority provision) to be audited as part of a five-year plan and for AEB procured provision to be audited over the programme's four-year term. Under cover of MD2462 (financial management of the AEB), the Mayor approved £270,000 funding from within the AEB Management and Administration budget for provider audits for the 2019-20 academic year.

The Mayor also approved an approach to GLA Provider Manager compliance checks for AEB Procured contracts which included a minimum 10% sample of outputs and outcomes under cover of MD2371.

This Mayoral Decision form seeks approval of expenditure on a proposed approach to audit services for the AEB Grant and Procured programmes over the next five years, and a cap on the sample size for AEB Procured and ESF compliance checks.

Decision:

That the Mayor approves:

1. proposals for carrying out required AEB Programme (Grant and Procured) audit visits by procuring auditors under the Crown Commercial Service framework;
2. expenditure of up to £688,000 on audit services required for the delivery of the AEB Programme's five-year audit approach; and
3. a cap of 15 learner/participant files per quarter (60 per year) on the 10% sample size for GLA Provider Manager compliance checks on the Mayor's ESF 2019-23 and AEB Procured programmes.

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:

9/12/19

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

Decision required – supporting report

1. Introduction and background

- 1.1 In order to receive the delegation of AEB functions and funding for London, the GLA was required to meet certain readiness conditions set by the Department for Education (DfE). The sixth readiness condition required the GLA to ensure funding and provider management arrangements, including securing financial assurance, were agreed in a way that minimises costs and maximises consistency and transparency. Hence, in developing proposals for audit and assurance, GLA officers have given due consideration to the aims of value for money and minimising the administrative burden on providers.
- 1.2 The GLA's audit and assurance programme includes a range of activities and processes to minimise the level of risk on London's AEB and ESF Programmes. These include:
- audit visits (AEB Grant and Procured);
 - financial assessments (AEB Grant, AEB Procured, ESF);
 - processes for managing allegations of fraud and irregularity (AEB Grant, AEB Procured, ESF);
 - requirement to obtain a sub-contracting audit certificate where subcontracts exceed £100k (AEB Grant and AEB Procured);
 - shared letters of assurance between the GLA and ESFA (AEB Grant, AEB Procured); and
 - provider manager compliance checks (AEB Procured, ESF).
- 1.3 Following the AEB Mayoral Board meeting on 11 July 2019, the Mayor approved under cover of MD2499 an audit approach which requires all AEB grant funded providers (other than local authorities) to be audited as part of a five-year plan through a random selection approach. AEB procured providers are to be audited over the programme's four-year term using the same approach.
- 1.4 It was also previously agreed at the AEB Mayoral Board meeting of 19 September 2018 for ESF 2019-23 and by the Mayor under cover of MD2371 for AEB Procured that 10% of learner/participant files would be checked for eligibility and compliance.
- 1.5 This Mayoral Decision seeks approval for a cap on previously approved sample sizes for the compliance checks by GLA Provider Managers, and for the procurement of audit services for the AEB Programme.
- 1.6 This decision was considered by the AEB Mayoral Board on 26 November 2019, ahead of approval by the Mayor.

2. Objectives and expected outcomes

Changes to AEB Procured and ESF 2019-23 compliance check sample sizes

- 2.1 On the GLA's ESF programmes, evidence of outputs and outcomes is checked for ESF eligibility and compliance to mitigate the risk of clawback if irregularities are identified by the Government Internal Audit Agency (which provides the audit function of the national ESF Audit Authority). This also applies to AEB Procured which is used as match funding for the Mayor's ESF 2019-23 Programme.
- 2.2 A sample size for these checks of 10% of claimed outputs and outcomes was approved by the Mayor under cover of MD2371. This was based on practice for previous GLA ESF Co-financing programmes which achieved low levels of irregularities at audit of less than 0.05%. However, while the GLA 2011-

13 ESF Youth programme supported about 3,000 participants over three years, about 33,000 will be supported each year across the ESF 2019-23 and AEB Procured contracts. The average number of participants per year per contract is 767, but the contracts range in size from the largest AEB Procured contract with more than 3,400 learners per year, to the smallest ESF 2019-23 contract with about 140 participants per year.

- 2.3 Considering the significant increase in participant numbers and the available contract management resources, this Mayoral Decision seeks approval for a cap of 15 participant files per quarter (60 per year) on the 10% sample size that was previously agreed. This would still follow the ESF National Audit Authority approach of checking 10% of the value of the claim, but also more closely align to the ESFA’s auditors, who check a maximum of 50 files on each audit regardless of the number of learners. The ESFA’s rationale for this fixed sample size is that the sample is sufficient to expose any issues with the provider’s systems of data or evidence management. Based on current contract sizes, the cap would apply to 13 of the AEB Procured contracts and one of the ESF 2019-23 contracts. As now, GLA Provider Managers may expand the sample size if irregularities are identified which suggest there may be systemic issues or fraud.

Audit visits

- 2.4 The Mayor’s Office for Policing and Crime (MOPAC) provides audit services to the GLA under shared service arrangements. GLA officers have been working with MOPAC to develop an audit approach that will provide a high level of assurance to the Mayor and the GLA financial statements auditors over the AEB programme. Officers have also worked with the ESFA and Mayoral Combined Authorities (MCAs) to develop an audit approach that minimises any additional audit and assurance burden on AEB providers.
- 2.5 The ESFA’s minimum service offer for audit includes up to three audit visits in the academic year 2019/20 to be carried out by ESFA procured auditors on behalf of the GLA (while data sharing agreements are in place with the ESFA) for providers that the GLA has in common with the ESFA. Arrangements for 2020/21 onwards will need to be agreed once more information is available on changes that are expected to be introduced by the GLA and MCAs from 2020/21.
- 2.6 From 2021/22, the GLA will only fund providers based within London and a pre-determined ‘fringe’ area. As a result, the number of audits required for grant funded AEB from that academic year is likely to fall. This has been accounted for in the estimated number of audits required below.
- 2.7 Officers have also accounted for additional audits or investigations that may be required where high risk factors emerge, or as part of an investigation into fraud or financial irregularity suspicion or allegations. Risk factors will include intelligence from GLA Provider Managers, data analysis on Individualised Learner Record (ILR) submissions, and error rates on previous audits.
- 2.8 The estimated total number of audits that will need to take place across grant and procured funding programmes based on the above approach over the next five years is set out in the table below.

	2019/20	2020/21	2021/22	2022/23	2023/24
AEB grant	15	15	8	8	8
AEB Procured	8	7	7	7	7 ¹
Risk-based audits	5	4	3	3	3
Total	28	26	18	18	18

- 2.9 An options appraisal for the implementation of the GLA’s audit approach included delivery of audit visits via a GLA Audit Framework, carrying out the audits through MOPAC, and the recruitment of

¹ Based on the assumption of new four-year contracts under the same audit approach.

internal assurance officers. The recommendation set out in this decision form was considered to provide the highest level of expertise and the greatest possibility of alignment with ESFA audits.

- 2.10 This Mayoral Decision form seeks approval of expenditure for the proposed audit services. It is proposed that the services be procured using a Crown Commercial Service framework which was recently used by the ESFA to procure four-year contracts with four audit firms from August 2019. This recommendation provides the greatest possibility of alignment with the ESFA audit approach as joint audits can be carried out if the audit firms that have been contracted by the ESFA are successful in the GLA's procurement exercise. We will be working with TfL Commercial to procure the services using the framework. This is also in line with the GLA's Contracts and Funding Code.
- 2.11 Other benefits of this approach include access to auditors with a good knowledge of national AEB and ESF funding rules and experience of, and access to, the ESFA's Provider Data Self-Assessment Toolkit (PDSAT).
- 2.12 The estimated cost of this option is £688,000 over the five-year cycle including management meeting costs. The cost in the first year would be £159,000. This represents a saving of £111,000 on the previously approved budget of £270,000 for AEB audits in 2019-20, which can be used to increase the amount of funding available for direct AEB provision. Over the five-year period, savings would be in the region of £660,000.
- 2.13 The expected outcome of the expenditure is for the GLA to receive an independent audit opinion on the delivery of all AEB grants and procured contracts over the five-year cycle. This will provide the Mayor with a high level of assurance on the programme and provide a baseline for the development of the AEB audit approach at the end of the initial five-year cycle.

3. Equality comments

- 3.1 In carrying out any functions in respect of the AEB, the Mayor will comply with the public sector equality duty under section 149 of the Equality Act 2010.
- 3.2 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:
 - i. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - ii. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - iii. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 3.3 Relevant protected characteristics are age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 3.4 All AEB and ESF providers are required to have an equalities and diversity policy in place. The AEB Procured and ESF programmes both have specific targets to support groups with protected characteristics including female learners, learners from Black, Asian and ethnic minority communities, and disabled learners. The audit and assurance approach set out in this decision form will ensure that evidence exists to support the claims made against these targets.

4 Other considerations

- 4.1 There are no conflicts of interest to note for any of those involved in the drafting or clearance of the decision.

Risks

- 4.2 The main risk arising from the GLA's audit approach is that providers could experience multiple audit visits by the GLA, ESFA and MCAs where the various authorities have providers in common. The preferred option minimises this risk as far as possible as it will enable the GLA to align visits with planned ESFA and MCA audit visits where ESFA auditors are successful in the procurement exercise.
- 4.3 Capping the ESF evidence sample sizes may lead to a slightly higher risk that non-compliance is overlooked by the GLA, subsequently leading to clawback by the ESF Audit Authority. Mitigations for this risk include:
- GLA Provider Managers are receiving training on conducting evidence checks to ensure consistency of understanding and approach;
 - a Programmes Compliance Manager role has been created to develop a robust process that will ensure the quality of the compliance checking process by Provider Managers;
 - claims are submitted to the Department for Work and Pensions (DWP) after evidence checks are completed, reducing the likelihood of irregularities in ESF Audit Authority samples;
 - the contracts place the responsibility for meeting evidence requirements on the provider and give the GLA the right to recover funds from the provider if irregularities are identified by the GLA or the ESF auditors.

Links to Mayoral strategies and priorities

- 4.4 The Audit and Assurance approach that will be delivered as a result of this Mayoral Decision will help to ensure that the funding that is available to the Mayor for employment and skills provision through the AEB and ESF programmes is being spent effectively to support Londoners in line with the Mayor's priorities as set out in the Skills for Londoners Strategy.

5 Financial comments

- 5.1 The cost of procuring audit services from the Crown Commercial Service Framework over the initial five-year cycle have been estimated based upon the expected number of audits that may be required, (taking into consideration the ESFA's minimum service offer).
- 5.2 All costs will be funded from within the annual AEB grant, including any costs that transpire from additional audits / investigation work over and above the agreed base contract. The AEB grant is expected to be in the region of £311m from 2020-21.

6 Legal comments

- 6.1 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 delegation of AEB functions from the Secretary of State for Education to the Mayor. A particular 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.
- 6.2 In taking the decisions requested, the Mayor must have due regard to the Public Sector Equality Duty; namely the need to eliminate discrimination, harassment, victimisation and any other conduct

prohibited by the Equality Act 2010, and to advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic (race, disability, gender, age, sexual orientation, religion or belief, pregnancy and maternity and gender reassignment) and persons who do not share it (section 149 of the Equality Act 2010). To this end, the Mayor should have particular regard to section 3 (above) of this report.

6.3 Should the Mayor be minded to make the decisions sought officers must ensure that:

6.3.1 the services required:

- (a) meet all requirements of the DfE/ESFA and DWP/EPMU; and
- (b) are procured in liaison with TfL Commercial fully in accordance with the provisions of the Crown Commercial Services framework being used; and

6.3.2 following the conclusion of such procurement activity the relevant Crown Commercial Services call-off contract documentation is put in place and executed by the successful bidder(s) and the GLA before the commencement of such services.

7 Planned delivery approach and next steps

7.1 The next steps are summarised below:

Activity	Timeline
AEB Mayoral Board to approve audit and compliance checks recommendations	26 November 2019
MD approval of recommendations	13 December 2019
Procurement of audit contracts	December 2019 – February 2020
ESF evidence checks on first quarter's claims (access to full ILR data set not available prior to this)	January 2020
Audit delivery start date	March 2020

Appendices and supporting papers:

None.

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FoIA) 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 it has been approved 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: It contains information which if disclosed prior to the completion of the procurement activity would prejudice the GLA's ability to stimulate genuine competition and obtain value for money.

Until what date: 31 March 2020.

Part 2 - Sensitive information

Only the facts or advice that would be exempt from disclosure under FoIA should be included in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form - NO

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer:

Ann-Marie Soyinka has drafted this report in accordance with GLA procedures and confirms the following:

✓

Sponsoring Director:

Debbie Jackson 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 9 December 2019.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

M. J. Allen

Date

9.12.19

CHIEF OF STAFF:

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

Signature

D. Bellamy

Date

9/12/2019.

