

**Adult Education Budget Mayoral Board**

Date of meeting: **19 September 2018**

Title of report: **Adult Education Budget procurement approach**

To be presented by: **Julie Sexton, Senior Manager – Programme Delivery, Skills and Employment**

Cleared by: **Lucy Owen, Interim Executive Director – Development, Enterprise and Environment**

Classification: **Public** (with appendix reserved from publication as it contains information intended for publication at a later date)

**1 Executive Summary**

- 1.1 The GLA intends to procure approximately 10% of its devolved Adult Education Budget (AEB) allocation, amounting to approximately £130 million over four years. This budget will be used as match funding to draw down £71 million of London's European Social Fund (ESF) allocation.
- 1.2 The GLA intends to procure the AEB contracts using the Public Contracts Regulations 2015 Light Touch Regime (LTR). This paper sets out the key elements of the procurement approach, noting that some proposals remain subject to further legal or procurement advice.
- 1.3 Further detail in relation to the approach set out in this report is included in the additional information pack provided with this agenda.

**2 Recommendations**

- 2.1 The AEB Mayoral Board is asked to:
  - 2.1.1 **Endorse** the proposed AEB and ESF procurement approaches;
  - 2.1.2 **Endorse** the proposed maximum and minimum thresholds for bids;
  - 2.1.3 **Note** the key risks and proposed mitigations;
  - 2.1.4 **Note** that some proposals remain subject to further legal or procurement advice and that changes may be required following the outcome of the consultation on the Skills for Londoners Framework;
  - 2.1.5 **Note** that the AEB procured provision will be used as match funding to draw down ESF funding for a separate AEB-ESF programme which will be approved via a Mayoral Decision (MD) in accordance with standard "Mayoral Decision-Making in the Greater London Authority" procedures.

### **3 Introduction and Background**

- 3.1 The GLA intends to procure approximately 10% of London's devolved Adult Education Budget (AEB) allocation, amounting to approximately £130 million over four years.
- 3.2 This procured AEB provision will be required to be ESF-compliant and £71 million of it will provide match funding for a separate £71 million AEB-ESF programme. The remaining £59 million of AEB procured delivery will act as a "reserve".
- 3.3 The AEB funding which is eligible to be used as match for ESF is less than the total £130 million of procured AEB for two main reasons: the AEB providers are less accustomed to meeting ESF requirements, so some AEB activities and outcomes may not be ESF-compliant, and the AEB providers may underspend. 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. vocational support for asylum seekers is not eligible for ESF support) 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.
- 3.4 The final AEB allocation is not expected to be confirmed by the Department for Education (DfE) until as late as January 2019. The final budget for AEB procured provision cannot be confirmed until after this, which is later than the expected deadline for the procured AEB tender submissions. All current indications are that the AEB 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 a greater or lesser amount of AEB provision depending on the final allocation, the procurement documentation will advertise the budget as approximately 10% of the London AEB allocation up to £50m per year, but probably around £32m.
- 3.5 This paper sets out the GLA's proposed approach to procuring the AEB contracted provision. The separate AEB-ESF programme will be approved via a Mayoral Decision (MD) in accordance with standard "Mayoral Decision-Making in the Greater London Authority" procedures.

### **4 Issues for consideration**

- 4.1 This paper provides further information on the proposed approach to procurement, noting any specific changes from standard procurement approaches or previous Education and Skills Funding Agency (ESFA) practice in relation to procuring AEB.
- 4.2 The GLA intends to procure the AEB contracts using the Public Contracts Regulations 2015 Light Touch Regime (LTR). The procurement will follow the Open procedure, with a Standard Selection Questionnaire (SSQ) and a separate Invitation to Tender (ITT). TfL's e-tendering system, ProContract will be used to manage the full tender exercise.

- 4.3 Advance notice of the intention to publish will be provided via publication of a Prior Information Notice (PIN) in September 2018. This will set out the GLA's purchasing intentions; inform the market that it should expect a procurement to commence; and advertise forthcoming market engagement activity.
- 4.4 The ITT and contract notice will be published via ProContract and further advertised via OJEU, Contracts Finder and CompeteFor. Provider representative organisations will be notified of the launch by email on the day of publication and one or more workshops will be organised by City Hall to provide information to potential bidders within a few weeks of the ITT publication. Bidders will also have the opportunity to request clarifications via the TfL ProContract e-procurement system.
- 4.5 Bids will be accepted from Sole Deliverers, Sole Lead Applicants, or Consortia (definitions can be found in Appendix A (Annex 3)). GLA officers understand that ESFA did not previously allow applications from consortia, but it is in line with the GLA's approach on other programmes and may offer advantages for smaller providers, enabling risk-sharing and reducing or eliminating sub-contracting fees.
- 4.6 An eight-week period between the launch of the ITT and the tender submission deadline is currently anticipated. Organisations will be required to submit responses to both the SSQ and the ITT at the same time.
- 4.7 The GLA expects the SSQ questions to be the same for all bidders. The SSQ will be used to identify whether interested providers are fit for purpose. Some responses to SSQ questions will result in mandatory or discretionary exclusion of bidders from the ITT evaluation stage. The GLA will only assess ITT responses from organisations which successfully pass the SSQ stage. The published ITT will include our service requirements and an ITT template to be completed by providers.
- 4.8 As mentioned, the GLA intends to match the procured AEB to two overarching ESF Investment Priorities:
- 4.8.1 Investment Priority 1 (IP1) supports unemployed and economically inactive people to access employment, and young people who are not in Education, Employment or Training (NEET) to access learning; and
- 4.8.2 Investment Priority 2 (IP2) supports people in work, particularly in low pay or with low skills, to improve their skills for the local economy.
- 4.9 The AEB match funding against each IP must be sufficient to enable the GLA to draw down the ESF for that IP. To mitigate the risk of securing insufficient match for one or the other IPs, the GLA intends to ask bidders to bid against two separate lots based on ESF IP1 and IP2. Organisations may bid against one or both lots by submitting a single tender response.
- 4.10 In addition, the procured AEB contracts will be designed to allow a limited amount of flexibility for providers to deliver to participants who do not meet the core criteria for a lot. The core criteria and flexibilities will be published in the AEB procurement documentation.
- 4.11 The division of the AEB budget for procured provision into two lots is a departure from the previous ESFA approach that had just one lot, and so it is worth noting the two key reasons for this:

- 4.11.1 The ESFA do not use AEB to match fund their IP2 ESF provision because they have other sources of match funding which are not available to the GLA; and
- 4.11.2 The provider pool from which the ESFA can draw eligible participants as match-funding is national and significantly greater than the GLA's, so the risk of having insufficient match funding for an IP is negligible.
- 4.12 The ITT will have common 'core' technical questions as well as IP-specific technical questions that will differ depending on the lot. Bids will be scored against both the common and the lot-specific technical questions and will receive a separate score for each lot.
- 4.13 Bidders will be ranked within each lot by their score for that lot and funding will be awarded on this basis. In order of ranking (highest scoring bids ranked first), providers will receive the total amount that they have bid for, up until the point where the budget for that lot has been exhausted.
- 4.14 As published in the Skills for Londoners Framework, the GLA intends to set minimum contract values of £400,000 (i.e. £100,000 per year) to seek to ensure that the number of contracts awarded is manageable without additional AEB management costs.
- 4.15 The GLA is also intending to set a maximum contract value (or "cap") per four-year contract with the aim of ensuring supplier diversity and mitigating the risk that just one or two successful organisations secure the majority of the available funding, thereby potentially excluding other smaller organisations and specialist providers from access to AEB procured funds for the next four years. The GLA recognises the possible negative impact on existing suppliers who are delivering above the cap and is undertaking an analysis of the supplier base to inform the capping level. The cap will be published in the ITT and will be based on analysis of AEB delivery data for previous years, including 2017-18 data if available.
- 4.16 The SSQ will include self-certified "due diligence" questions that may help to reduce the number of ITT submissions to be scored. The Finance and Procurement teams are in the process of confirming the questions and the degree to which provider responses would lead to a mandatory or discretionary exclusion from assessment of the ITT.
- 4.17 A large number of bids is expected and so, to manage resourcing, full due diligence will be undertaken only on organisations that are shortlisted to receive funding following scoring and moderation, and where possible, the GLA Finance team will rely on the financial checks undertaken by the ESFA for those organisations which are registered on the ESFA's Register of Training Organisations (RoTO) and have an up-to date financial health check that is rated above "satisfactory". In accordance with recent advice from external legal advisors, the GLA may also be required to carry out due diligence checks on organisations which are "significant entities"<sup>1</sup>. GLA Finance anticipate that external resource will be required to support the due diligence process.

---

<sup>1</sup> A "significant entity" is an organisation whose skills, expertise or capacity the lead applicant will rely upon to meet the criteria set out in the SSQ to pass the financial strength tests or deliver the required services (such as affiliates, associates, or sub-contractors).

- 4.18 All applicants will be notified in writing whether they have been successful or unsuccessful. All applicants will be provided with written feedback including: their overall score, the overall score achieved by the highest-ranked tender, the score for each section of their application, the sections of their application where the highest-ranked tender scored more.
- 4.19 There will be a minimum ten calendar day “standstill” period following notification of successful and unsuccessful bidders. During this ‘standstill’ period all bidders may submit a request in writing for more detailed feedback on their application and any aggrieved parties who consider they have been harmed or are at risk of harm should refer to the Public Contracts Regulations 2015.
- 4.20 The GLA will enter into a single contract with successful organisations, whether they have been awarded funding within one or both AEB procured lots. The contract will require separate financial and output schedules for each lot. Subject to further external legal advice, the GLA is also seeking to include contractual flexibilities that will allow for additional funding to be awarded to organisations that evidence good performance against contracted delivery targets, subject to GLA project manager approval.

## **5 Equality comments**

- 5.1 The aim of AEB and ESF is to improve opportunities for people who are disadvantaged in the labour market. Many potential AEB and ESF participants also have protected characteristics. The proposed AEB and ESF provision will support a range of groups, particularly the most disadvantaged people not currently receiving sufficient support into employment or education. These include young people who are NEET, people without basic skills, people who are unemployed such as parents, ex-offenders, homeless people, black and ethnic minorities and disabled people. The proposed programmes also seek to support Londoners in low-paid/ low-skilled jobs. Specific equalities factors are considered as part of the specification and procurement process for individual projects.

## **6 Risks arising / mitigation**

- 6.1 There is one overall critical risk, which is a delay to the planned “Go Live” date for the AEB procured provision of 1 August 2019. This is closely inter-related with the risk of insufficient staff resources to complete the procurement process in the time available.
- 6.2 These risks may arise due to the following factors:
- 6.2.1 The significant number of AEB (and AEB-ESF) procurement documents to be finalised and approved in September 2018, and the time required to incorporate changes required following the consultation on the Skills for Londoners Framework.
- 6.2.2 This is the first AEB procurement solely for London and so it is impossible to accurately predict the volume of bids, but they may well be substantial. The ESFA received approximately 700 tenders for its previous national AEB procurement round. Based on this, GLA officers

would expect around 200-250 bids. However, London has the largest share of the devolved AEB budgets and current providers and sub-contractors may view this as an opportunity for growth so there is a significant risk that the GLA will receive more applications than this. In addition, based on previous ESF grant award processes we can reasonably expect 150-200 tenders for the ESF specifications which will be advertised concurrently. Analysis of required person days, based on 600 tenders, suggests that there are sufficient resources across the Skills and Employment Delivery and Policy teams to complete the bid evaluations and meet the current procurement timetable. If the number of tenders is significantly greater, however, or if tender scoring and moderation takes longer than anticipated, resources may not be sufficient.

6.2.3 A large number of organisations will require due diligence checks and this is exacerbated by the fact that due diligence will need to happen at approximately the same time as financial year end in order to meet the contract award timetable and planned “Go Live” date.

6.3 Mitigations are in place to manage and offset these risks as follows:

6.3.1 The launch of the AEB procurement cannot be delayed because the Go-Live date cannot be pushed back, however, if necessary, work on the AEB-ESF programme procurement documentation could be put on hold for two to four weeks to focus resources on the AEB procurement and ensure publication as planned. This would lead to the ESF contracts being awarded later and is not ideal, but it is a ‘worst case’ option.

6.3.2 If the number of tenders received or the requirements of the scoring process exceed the resources available, there are two potential mitigations: secure support from external sources (either consultants, or volunteers from strategic stakeholder organisations that are not involved in bidding), but noting that this brings consequent risks of managing the quality and consistency of scoring; or delay scoring on the ESF contracts until after the AEB contracts have been scored with a resulting delay to the ESF contract awards as above.

6.3.3 The Finance team will only undertake due diligence on shortlisted bids and will rely on ESFA financial checks where possible. In addition, they are intending to secure external resource to undertake the due diligence checks on the AEB procured and AEB-ESF bids. If the number of shortlisted tenders is significantly greater than anticipated and the additional external resources are insufficient, then as a last resort, the due diligence on the ESF contracts could be delayed until after the AEB due diligence is completed, in order to protect the AEB ‘Go Live’ date.

6.4 In addition to the two key risks mentioned above, the anticipated large number of bids and consequent large number of people involved in scoring tenders will increase the risk of inconsistent and/or poor quality tender evaluations. There is also an associated risk that the quality of information provided on Pro-Contract to support the score awarded may be insufficient to provide good quality feedback to bidders. There has been criticism of a lack of consistency and quality in the ESFA’s procurement process and there is a reputational risk for the GLA as a result. In addition, if scorer’s notes are insufficient to justify the score awarded there is a risk of challenge by providers and ESF auditors may deem the procurement not to have met ESF requirements, leading to

clawback. These risks may be exacerbated if external scorers are required. The GLA will mitigate these risks through the following measures:

- 6.4.1 The GLA will provide guidance and training for all scorers;
  - 6.4.2 There will be a minimum of two scorers per bid, bids will be scored independently and scores will then be moderated by a third party; and
  - 6.4.3 Sample quality assurance checks will be undertaken by a third party on moderated scores and on feedback provided on Pro Contract to seek to ensure consistency.
- 6.5 Even with the minimum contract value, the final risk is that there will be insufficient resources to manage the contracts awarded. Estimates based on analysis of current data, suggest that the number of AEB contracts and grants (including AEB-ESF) will be more than estimated when original resource requirements were agreed, but nonetheless still manageable across the Employment and Skills Delivery teams. However, there remains a low risk that the number of contracts and grants will be greater than can be reasonably managed by the current team, applying the proposed project management approaches. If this risk arises, there are two potential mitigations: additional internal or external project management resources may need to be identified, with a consequent cost to the AEB and ESF budgets; or the current project management approach may need to be amended to require less resources, with a potential negative impact on the quality.
- 6.6 GLA officers will have a better idea of the likelihood and level of these risks once bids have been received.

## **7 Legal comments**

- 7.1 Legal have been consulted on the report and have no additional considerations.

## **8 Financial Comments of the Executive Director Resources**

- 8.1 There are no direct financial implications to the GLA arising from approving the procurement approach for the ESF element of the overall AEB Programme. It should be noted, however, there are several risks (including financial) associated with undertaking an ESF Programme, which will be considered along with their mitigating strategies in a separate paper.
- 8.2 The AEB and AEB-ESF procurement approach, as part of the assessment stage will include a robust due diligence process to ensure potential delivery partners are financially stable to handle the proposed grant / contract award and that there are no apparent eligibility issues from the onset of the process. The assessment process is still being considered and developed and will be subject further consideration as detailed within the main body of this report.

## **9 Next steps**

- 9.1 The GLA intends to start procuring the competitive proportion of AEB and AEB-ESF in October 2018, to be in contract prior to 1 August 2019.

9.2 The current indicative timetable of key milestones is provided below. Note that these dates are indicative only at this stage.

Key milestone	Date
Finalise AEB procurement documentation and secure Mayoral approvals in accordance with the powers delegated by the Secretary of State	May-Sep 2018
Prior Information Notice published	September 2018
AEB Procurement launched	Oct 2018
SSQ and ITT deadline	Dec 2018
Scoring, moderation, due diligence etc.	Dec 2018 - Feb 2019
Internal approvals, contract awards	Mar-Apr 2019
Standstill period, contracts signed, provider inductions and training, project set-up etc.	Apr-July 2019
"Go Live"	1 August 2019

## Appendices

- **Appendix A** – Detailed procurement approach documents (*included in a separate additional information pack and reserved from publication until the approach is formally approved by Mayoral Decision*) **[Not appended to MD 2371 but available on request]**

## Background Documents:

The following documents are available upon request:

- 'Adult Education Budget (AEB) procured provision and AEB-ESF programme procurement approach' (AEB Programme Board meeting of 11 July 2018)
- AEB Programme Board agenda and minutes from 21 August 2018.