

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2766

Title: Adult Education Budget Procured Performance Reviews and Reconciliations

Executive Summary:

This decision builds on MD2719 under cover of which the Mayor approved the AEB Procured reconciliation approach for the 2019/20 Academic Year. It provides additional information on the December 2020 review of Adult Education Budget (AEB) Procured contracts; particularly around the thresholds used to consider providers in scope for contract value increases or reductions, the outcome of the reconciliation of Skills Funding Support Payments and the treatment of errors identified through the GLA's provider manager compliance checks and the Education and Skills Funding Agency's (ESFA's) Funding Rule Monitoring Reports.

The decisions set out in this form were considered by the AEB Mayoral Board on 24 February 2021.

Decision:

That the Mayor approves the:

1. recommended financial reductions to Adult Education Budget (AEB) Procured contracts taking into account performance prior to the onset of the COVID-19 pandemic and at the end of the 2019/20 Academic Year;
2. reconciliation recommendations for AEB Procured funding for the 2019/20 Academic Year; and
3. proposed approach for the May 2021 performance review of AEB Procured contracts.

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:

8/3/21

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

Decision required – supporting report

1. Introduction and background

- 1.1 The Mayor previously approved, under cover of MD2719, a high-level approach for the review of the AEB Procured delivery over the 2019/20 Academic Year (AY). This Mayoral Decision (MD) seeks further approvals following the December 2020 review of AEB Procured contracts; particularly around the thresholds used to consider providers in scope for contract value reductions, the reconciliation of Skills Funding Support Payments and the treatment of errors identified through the Education and Skills Funding Agency's (ESFA's) Funding Rule Monitoring Reports. The outcome of the review for each project is set out in Appendix A.

2. Objectives and expected outcomes

Growth and reductions

- 2.1 The AEB Procured Funding Rules set out the conditions that needed to be met in order for an increase in a provider's contract value to be considered. These included:
- the quality of evidence presented to the GLA over the previous three monitoring or audit visits raising no substantive issues or cause for concern;
 - the provider being within 10% of annual Contract targets for the 12 months preceding the performance review point at which a request for an increase in the value of a Contract is made;
 - Ofsted not having rated the provider's leadership and management as inadequate; and
 - the provider not being under notice for failure of inspection or financial control.
- 2.2 Officers reviewed each project in line with the conditions set out above and informed providers of whether or not they were in scope for an increase in contract value.
- 2.3 As approved under cover of MD2719, underperformance in the 2019/20 AY which was not related to COVID-19 would not be automatically carried forward into 2020/21 and future years. This MD seeks approval to reduce contract values where there was significant underperformance prior to the first COVID-19 lockdown (at R06) which was persisting at the end of the 2019/20 AY (R14), using a threshold of 30% to determine significant underperformance. This places one Lot 1 contract and one Lot 2 contract within scope for reductions in their contract values.
- 2.4 The 30% threshold referenced in paragraph 2.3 was established following a review of the overall programme and individual provider performance at R06 and R14. It aligns with the pre-Covid mid-year reconciliation approach to decide which AEB Grant providers were in scope for grant reductions in the 2019/20 AY. It also takes into account the proportion of providers that were underperforming at R06, the fact that the 2019/20 AY was the first delivery year of four-year contracts and that a number of providers would have needed time to establish delivery, and the proportion of providers that, allowing for the impact of COVID-19, were still underperforming at a significant level at R14.
- 2.5 Providers in scope for contract value reductions based on the above threshold have been offered an opportunity to submit a business case to carry forward funding where they can evidence a trajectory of improved performance based upon their R04 2020/21 claim submissions. One business case was submitted and this was reviewed alongside the progress made against recovery plans which providers were asked to submit in October 2020. The recovery plans explain the reasons for the underperformance and identify specific, measurable, achievable, realistic, and timely (SMART) actions to improve performance following the guidance outlined in the [AEB Procured Provision - Managing Provider Performance document](#) published on the GLA website. The proposed total contract value

reductions of £390,303 set out in Table 3 of Appendix A reflects the consideration of the business case received.

- 2.6 Following approval of the proposed changes to contract values and funding values to be carried-forward as set out in Table 3 of Appendix A, providers will be asked to reprofile their funding and targets into the remaining contract period. Provider Managers will review the new profiles to ensure they are realistic, based on the recovery plan discussions that have taken place, and that outputs and outcomes are appropriately spread across the remaining delivery timeframe.

2019/20 reconciliation outcomes

- 2.7 In order to determine the End of Year position for each project, officers have reviewed the results of compliance checks and assurance reviews, final learner support claims, Funding Rules Monitoring Reports produced by the ESFA and the Skills Funding Support Payments which were made to AEB Procured providers to sustain delivery cashflows through the COVID-19 period of closures.
- 2.8 The approach to the reconciliation of Skills Funding Support Payments approved under cover of MD2719 required AEB Procured providers to submit certified operational costs for the period impacted by COVID-19. Where the amount paid by the GLA for actual delivery and Skills Funding Support Payments is higher than a provider's operational costs for the period, the GLA will recover the difference up to the maximum of the Skills Funding Support Payment. If the provider's operational costs are higher than the amount paid by the GLA, there will be no recovery of the Skills Funding Support Payment.
- 2.9 Due to the fact that the value of Skills Funding Support Payments paid was based on the provider's previous average monthly earnings, officers have identified some cases where Skills Funding Support Payments have caused the total amount paid to providers to exceed their overall 2019/20 AY allocations. It is therefore proposed that a cap is applied to the value of Skills Funding Support Payments that is retained by providers to ensure that their overall allocation for the 2019/20 AY is not exceeded. In total, after reconciliation, £1.15m of Skills Funding Support Payments will have been made as set out in Table 1 of Appendix A.
- 2.10 Provider Managers have completed compliance checks on a sample of claim submissions received from AEB Procured providers for 2019/20 AY delivery and have worked with providers to ensure any required updates or amendments were made prior to the R14 claim that was submitted in October 2020.
- 2.11 Officers have also reviewed the Funding Rules Monitoring Reports supplied by the ESFA which highlight potential errors such as duplicate learners or learners taking the same course with different providers. The total value of these errors is £132,679, affecting a total of 14 providers. The ESFA does not pay for the value of any claims identified by these reports as erroneous. This MD therefore seeks approval to recover the value of these errors from providers.
- 2.12 There were also a few instances where the value of a provider's delivery or learner support for the 2019/20 AY exceeded the approved value of their allocation for that year. Where the delivery exceeds the allocation for a Lot but is within the provider's overall approved funding for the year, payments have been made. However, where the overall 2019/20 AY approved funding has been exceeded, the GLA has not made payment. This issue impacts on seven providers and the total value of the delivery is £537,563 (£144,955 of which exceeds the overall 2019/20 approved funding and so is currently unpaid). This MD seeks approval for the GLA to make the additional payments to the affected providers from the programme's 2019/20 AY underspend and for the 2020/21 approved allocations for each Lot to be adjusted to ensure the four-year value per Lot and overall four-year contract value is unchanged.
- 2.13 The final 2019/20 funding, including Skills Support funding, after reconciliation adjustments, is set out in Table 2 of Appendix A.

May 2021 mid-year performance review

- 2.14 Given the latest COVID-19 related closures of most educational settings by central government, it is expected that further recommendations for the carry-forward of, or reduction in, financial allocations and associated targets will be made as a result of the May 2021 performance review.
- 2.15 The Deputy Mayor for Planning, Regeneration and Skills wrote to AEB Procured Providers in January 2021 in recognition of the negative impact that the current national lockdown restrictions would have on their delivery plans. On the other hand, providers that had been placed in the recovery plan process in October 2020 would have had a six-month period to demonstrate improved performance. This MD seeks approval for the approach for the next performance review set out below which takes into account the continued COVID-19 related challenges that providers are facing, while also ensuring that contract values are deliverable within the remaining contractual timeframes. The recommended approach is as follows:
- 2.15.1 Providers will continue to be required to meet the conditions set out in the AEB Procured Funding Rules in order to be considered for an increase in contract value;
 - 2.15.2 A minimum performance threshold of 68% will be set for AEB funding delivery and key European Social Fund (ESF) results targets against agreed reprofiles in line with the threshold set nationally and by the GLA for the 2019/20 AY AEB Grant programme;
 - 2.15.3 Providers performing below this threshold will be in scope for a reduction to their overall contract value and associated ESF Results. Contract values will be reviewed individually in consultation with providers in order to determine an achievable level of delivery over the remainder of the contract; and
 - 2.15.4 Providers facing reduced contract values or requesting increases in their contract values will have an opportunity to submit a business case which will be considered before final recommendations are made to the Mayor.
- 2.16 The minimum performance threshold proposed aligns with the year-end threshold set by the ESFA and adopted by the GLA as the point at which allocations are paid in full for the 2019/20 AY.
- 2.17 The expected outcome of this MD is that the AEB Procured programme will provide greater value for money as a result of adjustments for funding errors, the reclaiming of Skills Funding Support Payments where this exceeds a provider's operational costs or 2019/20 AY allocation, and the approach set out to manage performance at the May 2020/21 AY performance point. The approach supports providers by taking a considered approach which recognises the challenges of delivering during the COVID-19 closures, allowing for Support Funding to be retained to cover a reasonable level of operational costs incurred to maintain delivery during the closure period and permitting providers to carry forward a significant proportion of their unused 2019/20 AY allocation to enable delivery in the remaining years of the four-year contract. Proposed reprofiles and contract reductions will also help to improve the deliverability of underperforming projects over the remaining contract term.

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 In determining the GLA's AEB Procured Reconciliations approach for the 2019/20 AY, due consideration was given to its impact on learners with protected characteristics. The approach to the reconciliation of Skills Funding Support Payments and the December 2020 performance review supports the stability of AEB Procured Providers during current COVID-19 pandemic, ensuring that funding arrangements will not reduce the existing range and breadth of provision available to London residents.
- 3.5 The aim of the AEB and ESF is to improve opportunities for people who are disadvantaged in the labour market. Many potential AEB participants have protected characteristics listed above. The GLA's AEB Procured provision will support a range of groups, particularly the most disadvantaged people not currently receiving sufficient support into employment or education. These include young adults who are not in education, employment, or training (NEET), people without basic skills and people who are workless. It will also support Londoners in low paid/low-skilled jobs.

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.

Links to Mayoral strategies and priorities

- 4.2 The interventions proposed in this MD align with the commitments made to support providers through the challenging period of COVID-19 closures. Ensuring financial stability of the AEB provider base is important to support the achievement of Mayoral priorities relating to London's Recovery Programme.

Risks

- 4.3 Clawback of funding through reconciliation processes may lead to provider instability and/or complaints: The only clawback of funding that is being proposed by this report is in relation to AEB Procured Skills Funding Support Payments, where these exceed the cost of delivery or bring total payments above a provider's overall allocation for the 2019/20 AY, and Funding Rules Monitoring Report errors. Officers will work with providers to determine the best way of recovering the funds without destabilising them.
- 4.4 There is a risk that providers will not be able to deliver the COVID-19 related underperformance that is proposed to be carried into future years: the re-profiling process that will be completed with providers following the Mayor's decision on the proposed changes to contract values will help to ensure that providers are working to a realistic profile. The proposed approach for the May 2021 performance review aims to ensure that any funding that cannot be delivered through the AEB Procured programme can be reallocated to other areas of delivery.

5. Financial comments

- 5.1 MD2719 sets out the conditions for the AEB procured reconciliation approach for the 2019/20 AY, in particular the thresholds used to consider providers in scope for contract value increases or reductions, the outcome of the reconciliation of Skills Funding Support Payments and the treatment of errors identified through the GLA's provider manager compliance checks and the Education and Skills Funding Agency's (ESFA's) Funding Rule Monitoring Reports.

- 5.2 This MD seeks approval for several contract adjustments / funding clawbacks that meet the conditions set out in MD2719, specifically the following:
- contract underperformance: £390,303;
 - potential duplicate errors to be clawed back: £132,679; and
 - contract overperformance: £537,563.
- 5.3 The adjustments in contract values are to be contained within the ring-fenced AEB for the 2019/20 AY and in the case of overachievement in 2019/20, the approved allocations for the 2020/21 AY will be adjusted to ensure that the overall value of the contract over the four-year period remains unchanged. With regards to any clawback of funding as detailed above that is to be recovered through the reconciliation process, this will be redirected back to the ring-fenced AEB for future investment.

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 of the delegation to the Mayor of AEB functions from the Secretary of State for Education. A particular limitation of the delegation 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, sex, 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 choose to make the decisions sought officers must ensure that the reconciliation and reductions proposed (and any such further reconciliations resulting from the May 2021 performance review) are documented in accordance with the provisions of the agreements with the providers concerned, those agreements being varied before any reliance is placed upon the new figures, profiles and related details where necessary.

7 Planned delivery approach and next steps

- 7.1 The next steps are summarised below:

Activity	Timeline
Reprofiling of AEB Procured contracts	March 2021
May 2021 AEB Procured performance review recommendations to be considered by the AEB Mayoral Board	May 2021
Implementation of May 2021 recommendations	June 2021

Appendices and supporting papers:

Appendix A – Outcome of 2019/20 AEB Procured December 2020 reviews and reconciliation process

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? NO

Until what date: (a date is required if deferring)

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:

Sarah Mulley 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 1 March 2021.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

D. Gane

Date

1 March 2021

CHIEF OF STAFF:

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

Signature

D. Bellamy

Date

1 March 2021

