

# AGENDA

**Meeting**    **Adult Education Budget (AEB)  
Mayoral Board**

**Date**        **Wednesday 19 September 2018**

**Time**        **2.00pm**

**Place**        **Room 8.7, City Hall, the Queen's  
Walk, London SE1 2AA**

*Agendas and minutes of the meetings of this Board are published at <https://www.london.gov.uk/node/46802> (except in those cases where information may be exempt from disclosure under the Freedom of Information Act).*

*Meetings are not held in public and are only open to those invited to attend by the Chair.*

**Members:**

Sadiq Khan, Mayor of London (Chair)

Jules Pipe, Deputy Mayor for Planning, Regeneration and Skills

David Bellamy, Chief of Staff

Nick Bowes, Mayoral Director, Policy

Martin Clarke, Executive Director – Resources

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- 1 Introduction and apologies**
- 2 Adult Education Budget (AEB) Mayoral Board Constitution**  
(Pages 3 – 8)
- 3 AEB implementation update** (Pages 9 – 18)
- 4 Process for transferring certain statutory AEB functions and funding** (Pages 19 – 30)
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- 10 Any Other Business the Chair Considers Urgent**

**Adult Education Budget (AEB) Mayoral Board**

Date of meeting:	<b>19 September 2018</b>
Title of report:	<b>Adult Education Budget Mayoral Board Constitution</b>
To be presented by:	<b>Rachel Greenwood, Senior Project Officer, Skills and Employment</b>
Cleared by:	<b>Lucy Owen, Interim Executive Director – Development, Enterprise and Environment</b>
Classification	<b>Public</b>

**1 Executive Summary**

- 1.1 This report sets out for information the constitution, including the terms of reference, for the Adult Education Budget (AEB) Mayoral Board.
- 1.2 The AEB Mayoral Board is the key forum for ensuring that certain statutory functions, due to be delegated to the Mayor from 1 August 2019, are implemented and delivered effectively. The AEB will bring c. £300m per annum to pay for education and training for adults aged 19+.

**2 Recommendations**

- 2.1 The AEB Mayoral Board is asked to note its constitution and terms of reference as set out at Appendix A to this report.

**3 Introduction & background**

- 3.1 Formal governance arrangements for implementing and delivering the AEB were recently approved by the Mayor under [MD2328](#).<sup>1</sup> This included the establishment of this Board along with the Skills for Londoners Board and Skills for Londoners Business Partnership (formerly the London Occupational Skills Board) that will provide external oversight and advise the Mayor on key decisions relating to the AEB.

**4 Issues for Consideration**

- 4.1 The AEB Mayoral Board is the key forum for ensuring that the statutory functions relating to the AEB, as delegated by the Secretary of State for Education to the Mayor of London under Section 39A of the Greater London Authority (GLA) Act 1999 from 1 August 2019, are implemented and delivered effectively.

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<sup>1</sup> Available at: <https://www.london.gov.uk/decisions/md2328-governance-arrangements-statutory-functions-relating-aeb>

- 4.2 Under the legislative framework permitting the delegation of functions to the Mayor, he is excluded from delegating any decisions further and must take them personally. This Board provides an opportunity for the Mayor to actively consider pending decisions before any final decisions are taken through the GLA [decision-making procedures](#).<sup>2</sup>
- 4.3 The constitution, attached at Appendix A, details the Board’s membership and responsibilities, and sets out its reporting procedures and commitment to openness and transparency.
- 4.4 The constitution will be reviewed as the AEB enters the delivery phase and annually thereafter. Should the Board at any time consider that the role or membership of the Board should be varied to enable it to better consider the recommendations presented to it, the Mayor retains the right to amend the constitution following consultation with the Board.

## **5 Equality Comments**

- 5.1 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.

## **6 Risks arising / mitigation**

- 6.1 Not applicable.

## **7 Legal comments**

- 7.1 Not applicable.

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

- 8.1 There are no direct financial implications to the GLA arising from the considerations set out in this report.

## **9 Next Steps**

- 9.1 Not applicable.

## **Appendices:**

- **Appendix A** – Adult Education Budget Mayoral Board Constitution

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<sup>2</sup> Available at: <https://www.london.gov.uk/about-us/governance-and-spending/good-governance/decision-making>

## **Adult Education Budget Mayoral Board Constitution**

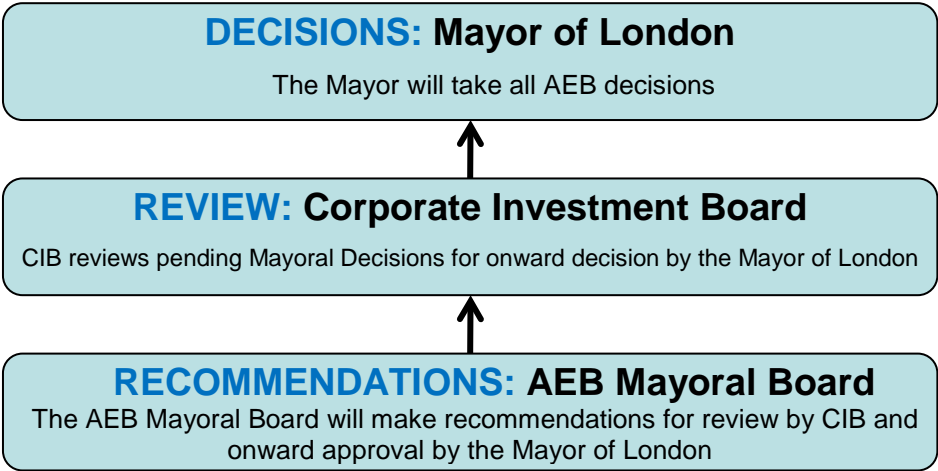
### **1 Purpose**

- 1.1 The Adult Education Budget Mayoral Board ("the Board") is the key forum for ensuring that the statutory functions relating to the Adult Education Budget, as delegated by the Secretary of State for Education to the Mayor of London under Section 39A of the Greater London Authority Act 1999 from 1 August 2019, are implemented and delivered effectively.
- 1.2 The AEB aims to engage adults and provide the skills and learning they need to equip them for work, an apprenticeship or other learning. It enables more flexible tailored programmes of learning to be made available, which may or may not require a qualification, to help eligible learners engage in learning, build confidence, and/or enhance their wellbeing.
- 1.3 Under the legislative framework permitting the delegation of functions to the Mayor, he is excluded from delegating any decisions further and must take them personally. This Board provides an opportunity for the Mayor to actively consider pending decisions before making any final decision through the standard Greater London Authority (GLA) decision-making procedures, notwithstanding that decisions cannot be delegated under the GLA's usual financial thresholds, as set out in section 2 below.

### **2 Authority and decision-making procedures**

- 2.1 The Board is authorised to consider any activity within its terms of reference.
- 2.2 In conducting its business, the Board must consider any resource implications and have regard to existing GLA processes and any guidance or legislation issued by HM Government.
- 2.3 The Board will act as an advisory body on all matters relating to the AEB and the Mayor must pay due regard to the Board's recommendations when making his final decisions. Significant changes to any agreed recommendations will usually be reverted to the Board and any minor alterations will be reported back to the next Board meeting for completeness.
- 2.4 Following any Board recommendations, a draft Mayoral Decision form will be submitted to the GLA's Corporate Investment Board (CIB) for consideration. Once draft Mayoral Decision forms are reviewed by CIB they are submitted to the Mayor for signature. All Mayoral Decisions are signed by the GLA's Chief Finance Officer to certify they are financially viable.
- 2.5 CIB performs a number of important functions including senior review and challenge of proposed decisions and the opportunity to ensure strategic alignment with the Mayor's vision and manifesto commitments across all GLA policy areas. It is also the mechanism to ensure that policies are turned into decisions in a coordinated and timely manner. Although all decisions need to be cleared through CIB ahead of formal approval, CIB's role is largely, except in exceptional circumstances, to make sure those decisions are being made properly rather than to reject them in principle.

- 2.6 If there is urgent business which needs to be considered before the next scheduled meeting, the Chair, or in the absence of the Chair, the Mayor’s Chief of Staff, may convene an urgent meeting of the Board where circumstances allow. When this is not possible, so that the Board is able to progress its business in an efficient manner, urgent matters may be determined by email consultation before submission for final decision by the Mayor.
- 2.7 When a decision has been taken outside of a Board meeting, a report concerning the action taken will be placed on the agenda for the next scheduled meeting of the Board (as a matter for notification only) with a rationale for the decision having been taken in this way.
- 2.8 **Diagram 1: AEB decision-making process**



**3 Terms of reference**

- 3.1 The Adult Education Budget Mayoral Board will consider and make recommendations to the Mayor in relation to:
  - a) the strategic priorities and funding requirements for the AEB, including alignment to the Mayor’s Skills for Londoners Strategy;
  - b) the modelling of funding allocations for the AEB programme;
  - c) the funding allocations to education and training providers;
  - d) any redistribution of allocated funding in the AEB programme;
  - e) any key programme risks identified; and
  - f) any other area that the Mayor determines is needed in order to exercise his delegated authority.

**4 Membership**

- 4.1 The Board comprises the following Members:
  - Mayor of London – Chair;
  - Deputy Mayor for Planning, Regeneration & Skills;
  - Mayor’s Chief of Staff;
  - Mayoral Director, Policy;

- GLA Executive Director - Resources (Chief Finance Officer); and
  - any other appointment that the Mayor deems to be in furtherance of the Board's aims.
- 4.2 The Mayor may vary the membership and number of members of the Board at any time subject to consideration of any guidance and/or legislation set out by HM Government in relation to the delegation of the statutory AEB functions.
- 4.3 Board Members (other than any appointed by virtue of another role they hold (i.e. ex officio Members), or those already appointed to positions of employment or elected office at the GLA or board membership or employment at a GLA functional body) will be recruited and selected in accordance with the [GLA's Protocol on Mayoral Appointments](#). For those Members, the length of tenure and any requirements in relation to conduct and the disclosure and registration of personal interests will be set out in a letter of appointment.
- 4.4 Whilst Membership is restricted to Board Members, the capacity is retained to invite outside specialist input either on a standing basis or, where appropriate, on a specific topic or initiative.

## **5 Lead Officer**

- 5.1 The Lead Officer will be the GLA's Executive Director of Development, Enterprise & Environment.

## **6 Meetings and reporting procedures**

- 6.1 Meetings shall usually be held quarterly or at such other intervals as the Board may be required to take decisions.
- 6.2 Recommendations to the Board shall be by way of a report to the relevant meeting and will normally be issued to Members a minimum of five clear working days before the meeting.
- 6.3 The Board's Secretary, or a person nominated by the Secretary, will attend to provide secretarial and logistical support, take the minutes of the meeting and provide advice on governance and procedural matters.

## **7 Openness and transparency**

- 7.1 The Mayor of London is [committed to openness and transparency](#) in his administration and will make sure delivery of the AEB is in line with Mayoral policy and stakeholder expectations wherever possible.
- 7.2 Agendas and reports for the Board will be published on the GLA's website at least five clear working days before the meeting to which they relate.
- 7.3 All reports will be released with the agenda except in those cases where officers reasonably consider that information may be exempt from disclosure under an applicable exemption under the Freedom of Information Act 2000 (FOIA). These reports will be classed as 'reserved from publication'.
- 7.4 The main exemptions that are likely to make information reserved relate to the following (although others may be applicable under the FOIA):

- commercial sensitivity
- information provided in confidence
- personal data
- legal professional privilege
- information intended for publication at a future date

7.5 AEB Mayoral Board meetings will not be held in public, reflecting the accountability arrangements Parliament has put in place for the GLA, in that the Mayor is answerable to the London Assembly through Mayor's Question Time only after he has taken decisions.

7.6 Summary minutes of the meetings of the Board will be posted on the GLA's website within two weeks of the meeting to which they relate, with a final version published within ten clear working days of approval, which would normally take place at the following meeting.

## **8 Assurance**

8.1 The GLA will publish an AEB Assurance Framework which will provide details on how funds will be controlled, including arrangements for monitoring the levels of sub-contracting provision, audit, risk and scrutiny.

8.2 The Framework will signpost to all the GLA's existing policies and procedures relating to complaints, whistle-blowing and any other relevant and applicable provisions. The GLA will ensure this framework is compliant with any HM Government directions and it will be subject to review by the AEB Mayoral Board.

## **9 Stakeholder engagement**

9.1 Although accountability for all decision-making sits with the Mayor, City Hall recognises the need to engage with key stakeholders, particularly in relation to ensuring strategic priorities are being met, and addressing local need. As such, the Board will take into account any recommendations from other Mayoral bodies including, but not limited to, the Skills for Londoners Board and the Skills for Londoners Business Partnership.

## **10 Amendments to this Constitution**

10.1 The Constitution will be reviewed at the first meeting of the Board, again as the AEB enters the delivery phase and annually thereafter.

10.2 The Mayor retains the right to amend this Constitution at any time following consultation with the Board or if urgent, in consultation with his Chief of Staff and the Deputy Mayor for Planning, Regeneration and Skills. Any changes will be reported at the next meeting of the Board.



**Adult Education Budget (AEB) Mayoral Board**

Date of meeting:	<b>19 September 2018</b>
Title of report:	<b>Adult Education Budget Implementation Update</b>
To be presented by:	<b>Michelle Cuomo Boorer, Assistant Director – Skills and Employment</b>
Cleared by:	<b>Lucy Owen, Interim Executive Director – Development, Enterprise and Environment</b>
Classification	<b>Public</b>

**1 Executive Summary**

- 1.1 This report updates the Adult Education Budget (AEB) Mayoral Board on AEB programme implementation, including the submission of London's 'self-assessment evidence checklist' to the Secretary of State for Education and the AEB implementation project dashboard highlighting key issues and risks for the implementation phase.
- 1.2 The 'self-assessment evidence checklist' is the key evidence base the Secretary of State is using to satisfy himself that the Mayor is ready to receive the AEB functions.

**2 Recommendations**

- 2.1 The AEB Mayoral Board is asked to:
  - 2.1.1 **Note** the Adult Education Budget (AEB) programme implementation update, including the submission of London's 'self-assessment evidence checklist' to the Secretary of State for Education;
  - 2.1.2 **Note** the AEB implementation project dashboard (see Appendix A); and
  - 2.1.3 **Note** the membership of the Skills for Londoners (SfL) Board which will provide external oversight of the AEB programme (see Appendix B).

**3 Introduction & background**

- 3.1 As the GLA enters a new phase of programme implementation, particularly in terms of increased transparency and external governance, an implementation update report will be presented to each AEB Mayoral Board to ensure openness with all our key stakeholders. This report will include the AEB implementation project dashboard highlighting key issues and risks for the implementation phase. The report will also be presented to the newly established Skills for Londoners Board, which provides external oversight of the programme, on 21 September 2018.

## **4 Issues for Consideration**

### Satisfying HM Government readiness conditions

- 4.1 To demonstrate readiness for the delegation of statutory functions relating to the AEB to the Mayor from the start of the academic year 2019/20, the GLA was required to submit a 'self-assessment evidence checklist' to the Secretary of State Education indicating the measures put in place to implement and manage the AEB programme effectively.
- 4.2 The completed checklist comprised the following areas:
- Governance;
  - Financial;
  - Procurement;
  - Contracting and funding agreements;
  - Payments;
  - AEB Policy: funding rules and learner eligibility; provider allocations and funding formula and rates;
  - Data Collection and Reporting; and
  - Provider Management.
- 4.3 Evidence was provided against each section to outline the processes, communications and documentation either already in place, or to be put in place, to ensure the programme can be delivered effectively.
- 4.4 Officers worked closely with Department for Education (DfE) officials to understand the requirements and are confident that the appropriate arrangements have been put in place to meet expectations. Once the Secretary of State is satisfied that the requirements have been met the delegation of functions letter and Memorandum of Understanding (MoU) will be enacted (a separate update on the delegation of functions is included at Agenda Item 4).
- 4.5 The checklist and covering letter from the Mayor was submitted to the Secretary of State on 31 August 2018 and is available on request.
- 4.6 Outstanding documents and actions have been addressed by relevant officers and an update will be provided to the Secretary of State in due course.

### Governance

- 4.7 The Mayor (under [MD2328](#)) formally established the new internal and external governance arrangements for overseeing the AEB programme, namely this Board, the Skills for Londoners (SfL) Board and Skills for Londoners Business Partnership (SfLBP) (formerly referred to as the London Occupational Skills Board). We are now in the process of formalising member appointments to the SfL Board (see Appendix B), which will have its inaugural meeting on 21 September 2018. Recruitment for the SfLBP closed on 17 September 2018 with interviews and appointments due to take place in October 2018 and a first meeting expected in November/December 2018.

- 4.8 An Assurance Framework is being drafted to provide assurance that the GLA has in place the necessary systems and processes to manage delegated functions and funding relating to the AEB effectively. This will be completed by Spring 2019 and will be reviewed annually.

#### Skills for Londoners Framework

- 4.9 A separate report on the Skills for Londoners Framework is included at Agenda Item 5.

#### Procurement process

- 4.10 A separate report on the GLA's proposed approach to AEB procurement is included at Agenda Item 7.

#### Systems Update

- 4.11 Negotiation of a service offer from the Education & Skills Funding Agency (ESFA) of amendments to national Individualised Learner Records (ILR) data and systems in the first year of programme delivery continues through the Department for Education (DfE) / Mayoral Combined Authorities (MCAs) Devolution Data Governance Group<sup>1</sup>. The base offer includes an ESFA commitment to continue to apply national data validation and funding calculations to all provision in 2019/20, including that relating to devolved authorities. This enables the GLA to be confident of being able to draw enough information to make payments to providers from national ILR data in the first year of operation.
- 4.12 The GLA OPS<sup>2</sup> team have secured an agreed workplan that includes developments to support delivery of AEB-related systems from September 2018. The Skills and Employment team has started to plan and prepare for the discovery period by compiling relevant documentation and creating high level maps of existing processes, system functionality and compliance requirements. A series of interactive workshops with providers will commence from October 2018 to ensure they are able to feed into the design process.
- 4.13 The Transport for London (TfL) ProContract system will be used for procurement of contracted AEB provision. Successful providers will go through an onboarding process where they register onto GLA OPS. The GLA OPS system will be used for the ongoing contract management and payment processes. An approach to this is being developed with the GLA team.

#### Outcomes and Destinations

- 4.14 The GLA's proposed approach to outcomes and destinations for the programme is in development and will be considered by the Skills for Londoners Board on 21 September 2018 before consideration by this Board.

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<sup>1</sup> Seven MCAs are also expecting to receive funding and powers relating to the AEB for the 2019/20 academic year.

<sup>2</sup> The GLA Open Project System (OPS) is a new, user friendly online system which organisations can use to submit bids for GLA funding.

## Audit

- 4.15 The GLA's approach to audit, including audit of programme implementation and the strategy for auditing our AEB delivery partners (both grant and procured provision) is being developed in conjunction with the GLA's internal audit function provided by the Mayor's Office for Policing and Crime (MOPAC). This remains a key issue to be resolved and is highlighted as a key risk at Appendix A. Once this is further developed, the approach will be considered by the Skills for Londoners Board and AEB Mayoral Board before final decision by the Mayor.

## Communications

- 4.16 Top communications priorities include:
- creating a web presence on the London.gov domain;
  - developing FAQs for the website; and
  - creating a stakeholder list ready for the GLA's new customer relationship management (CRM) service.
- 4.17 The first priority to update the skills public facing webpages has been completed. [The landing page](#)<sup>3</sup>, including information on the AEB, decision-making and funding opportunities was published in August 2018 and work continues to develop the content further.

## Research and Analysis

- 4.18 A programme of research and analysis to support the implementation of AEB and Skills for Londoners Strategy has been devised. For 2018/19 this will include work to start the development of proposals on creating a more outcomes driven approach to AEB funding and undertaking development and consultation activity to help inform the Skills and Employment Knowledge Hub. All research will be funded by existing core funding committed to support implementation of Skills for Londoners activities. A full research plan is available upon request.

## **5 Equality Comments**

- 5.1 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.
- 5.2 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:
- 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

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<sup>3</sup> <https://www.london.gov.uk/what-we-do/business-and-economy/skills-and-training>

- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

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

## **6 Risks arising / mitigation**

6.1 The key issues and risks are included in the AEB project implementation dashboard attached at Appendix A.

## **7 Legal comments**

7.1 Not applicable.

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

8.1 There are no direct financial implications to the GLA arising from the considerations set out in this report.

## **9 Next Steps**

9.1 The project dashboard will be updated and reported to each meeting of the AEB Mayoral Board and Skills for Londoners Board.

### **Appendices:**

- **Appendix A** – AEB project implementation dashboard
- **Appendix B** – Skills for Londoners (SfL) Board - Membership

### **Background documents**

- AEB self-assessment evidence checklist as submitted to the Secretary of State for Education on 31 August 2018

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# Adult Education Budget: Implementation of new functions

Michelle Cuomo Boorer  
Skills and Employment

## Project description & approvals

In March 2018, the Mayor confirmed his intention to accept HM Government's offer to transfer the commissioning, delivery and management of London's annual Adult Education Budget (AEB) from 1 August 2019. This coincides with devolution of the AEB to 7 Mayoral Combined Authorities in England.

The principal purpose of the AEB is to engage adults and provide the skills and learning they need to equip them for work, an apprenticeship or further learning. It also enables more tailored programmes of learning to be made available, which do not need to include a qualification, to help those furthest from learning or the workplace.

The project was formally approved by: **MD** number: **2255** Other decision refs, including approval of variations: **N/A**

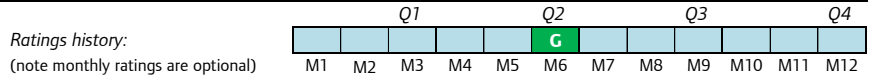
The project runs from: **01/03/2018** and is due to be completed by: **01/08/2019**

Project status: **Delivery** WBS code(s): **GE.0381.011**

- Key deliverables:
- Meeting Government's 'readiness conditions' and receipt of functions through delegation letter/MoU from the Secretary of State for Education
  - Procuring approx. 10% of overall AEB allocation
  - AEB funding allocations to procured and non-procured education and training providers in early 2019
  - Agreeing an audit approach for the programme, including how audit of providers will happen

- Key benefits:
- The Mayor will be able to create a skills system that is tailored to addressing London's specific needs
  - Ability to direct funding in line with Mayoral priorities and programmes, including drawing down some of the remaining European Social Fund (ESF)
  - In the longer term, The Mayor will be able to ensure funding is better targeted towards outcomes for Londoners

## PROJECT DELIVERY INFORMATION



Currently **the project is rated: GREEN**

because: The project is on track as far as the GLA can control but is subject to external factors including the timely transfer of functions from the SoS for Education; having to procure in advance of the transfer of functions, provision of allocation data from ESFA and lack of clarity on the audit approach.

- TIMESCALES: is milestone delivery on schedule? **G**
- ISSUES & RISKS: are they simple and manageable? **A**
- DELIVERABLES: are outputs/outcomes on track? **G**
- EXPENDITURE: is spend as budgeted? **G**

## UPDATE Progress since last update & summary of risks/issues and delivery (make sure it is up-to-date, stand-alone and in plain English). Alt Enter for new line

**Meeting DfE readiness conditions:** The GLA has developed its 'self-assessment evidence checklist' in conjunction with advice from DfE counterparts regarding expectations and it was submitted by the Mayor to the SoS on 31 August 2018. The checklist details the robust governance arrangements put in place to oversee the programme as well as the approach to procurement, contracting and funding agreements, payments, funding rules and learner eligibility; provider allocations and funding formula and rates, data collection and reporting; and provider management. We expect this to satisfy the SoS the Mayor is ready to receive the AEB in London and trigger the issue of the draft delegation letter and Memorandum of Understanding (MoU) ahead of the formal transfer of functions in the new year.

**Scope:** This Dashboard will evolve as the GLA moves through this part of the implementation phase into provider funding allocations and contract/grant awards at which point the GLA can consider relevant targets for delivery.

**Procurement:** We are on track to procure in time for 1 August 2019 'go live' date although there are some obstacles in terms of agreeing all required documents through the required processes.

**AEB allocations and data sharing:** GLA officers have requested ESFA data on current AEB allocations (2018/19) to help planning for the allocation of AEB in 2019/20 and ensuring we meet a commitment to maintain existing arrangements for year 1 and manage provider stability. On 6/8/18, the GLA Head of Paid Service escalated the delays in receiving the requested data to the DfE Permanent Secretary and asked him to escalate the matter as a matter of urgency.

**Audit:** GLA officers have requested that DfE/ESFA confirm their proposed approach to audit. In the absence of a mutually agreeable service offer from ESFA, it is likely that funding for audit of GLA-funded AEB provision will need to be identified from the existing AEB budget

TIMESCALES Milestones and activities from April 2018 to completion. Include more detail for this year.	Key?	By when?	Complete?	Revised date
<b>Transfer of functions:</b> Submission of 'self-assessment evidence checklist' to satisfy the SoS for Education that the Mayor is able to deliver AEB	Yes	31/08/2018	No	dd/mm/yyyy
<b>Transfer of functions:</b> Receipt of draft delegation letter and MoU for finalisation	No	30/09/2018	No	dd/mm/yyyy
<b>Transfer of functions:</b> Receipt of final delegation of functions letter and signing of MoU (timings tbc by DfE)	Yes	28/02/2019	No	dd/mm/yyyy
<b>Procurement:</b> Develop project specifications and procurement documentation (for AEB and AEB-ESF)	Yes	30/09/2018	No	dd/mm/yyyy
<b>Procurement:</b> Prior Information Notice (PIN) published	Yes	30/09/2018	No	dd/mm/yyyy
<b>Procurement:</b> AEB procurement launched	Yes	12/10/2018	No	dd/mm/yyyy
<b>Procurement:</b> Invitation to Tender (ITT) deadline	Yes	31/12/2018	No	dd/mm/yyyy
<b>Procurement:</b> Scoring, moderation, due diligence etc.	Yes	28/02/2019	No	dd/mm/yyyy
<b>Funding allocations:</b> Contract/grant awards for procured providers and grant recipients	Yes	30/04/2019	No	dd/mm/yyyy
<b>Funding allocations:</b> Standstill period for procured provision, contracts/grant awards signed, provider inductions etc.	Yes	31/07/2019	No	dd/mm/yyyy
<b>DELIVERY GOES LIVE</b>	Yes	01/08/2019	No	dd/mm/yyyy
		dd/mm/yyyy	No	dd/mm/yyyy
		dd/mm/yyyy	No	dd/mm/yyyy
		dd/mm/yyyy	No	dd/mm/yyyy
		dd/mm/yyyy	No	dd/mm/yyyy
		dd/mm/yyyy	No	dd/mm/yyyy

ISSUES: top 3 issues the project is currently facing:	In short, what might be the impact on the project?	RAG	What are we doing to resolve this?
Delays in Mayor meeting SoS 'readiness conditions' and/or agreeing terms of the MoU and delegation letter in new year.	Delays beyond early 2019 could affect the ability to formalise contract/grant awards in time for start of 2019/20 academic year	A	Continued open dialogue and sharing of information between GLA officers and DfE/ESFA counterparts.
Lack of data from ESFA resulting in proposed funding allocations being made on assumptions rather than reliable data.	Inability to effectively plan or meet commitment to maintain existing arrangements in 2019/20 and manage provider stability.	A	Escalation of key issues to GLA Head of Paid Service and Permanent Secretary in August 2018.
There is no agreed position on audit with the DfE/ESFA	Delays could affect the ability to finalise the contract performance management approach in time for procurement to commence in October.	A	Issue raised with DfE through regular meetings; now escalated via GLA Assistant Director. Draft audit specification in progress as part of contingency planning.

### Mini Risk Register

What is the risk?	What actions are we taking to mitigate the risk?	Probability: 1 = low, 4 = high	Impact: 1 = low, 4 = high	RAG
Delay in receipt of powers affecting the ability for GLA to formalise contract/grant awards in time for start of 2019/20 academic year	Constant dialogue with DfE has resulted in Secretary of State written commitment to transfer of functions (letter of 16/08/18).	2	3	A
Delays to receiving ESFA data making it difficult to maintain existing arrangements and provider stability in 2019/20.	GLA Head of Paid Service has escalated to the DfE Permanent Secretary via a letter dated 6 August 2018.	2	3	A
There is no agreed position on audit which compromises our performance management approach.	Continued dialogue with DfE/ESFA and draft audit specification in progress as part of contingency planning.	1	4	A

### TARGETS - tbc when implementation phase moves to contract/grant award



## Agenda Item 3, Appendix B

Organisation	Member
Deputy Mayor for Planning, Regeneration and Skills (Co-Chair)	Jules Pipe
London Councils Executive Member for Skills and Employment (Co-Chair)	Georgia Gould
London Councils	Cllr Ravi Govindia
London Councils	Cllr Darren Rodwell
London Councils	Cllr Ruth Dombey
London Councils	Cllr Steve Curran
<b>Provider representative bodies</b>	
Association of Colleges	Gerry McDonald
HOLEX	Arinola Edeh
The Association of Employment and Learning Providers	Nichola Hay
Employment Related Services Association	Kirsty McHugh
Greater London Volunteering	To be confirmed – the GLV CEO to attend the first meeting in advance of an official appointment which will be confirmed before the next meeting of the Board.
<b>Employer/business representatives</b>	
London First	Awaiting final confirmation from London First
Federation of Small Businesses	Sue Terpilowski
London Economic Action Partnership (LEAP) - London's local enterprise partnership	Celia Caulcott
Mayor's Business Advisory Board	Awaiting nomination from the Business Advisory Board
SfL Business Partnership (formerly the London Occupational Skills Board)	This is a new forum and an appointment will be made once the competitive recruitment process has been completed and Members have been formally appointed.

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**Adult Education Budget (AEB) Mayoral Board**

Date of meeting:	<b>19 September 2018</b>
Title of report:	<b>Process for transferring certain statutory Adult Education Budget functions and funding</b>
To be presented by:	<b>Rachel Greenwood, Senior Project Officer, Skills and Employment</b>
Cleared by:	<b>Lucy Owen, Interim Executive Director - Development, Enterprise &amp; Environment</b>
Classification	<b>Public</b>

**1 Executive Summary**

- 1.1 This report seeks endorsement for a Memorandum of Understanding (MoU) between the GLA and the Department for Education (DfE) for the provision of up to £1,920,054 implementation funding (see Appendix A). The funding is to be transferred to the GLA for the purpose of building capacity for managing the Adult Education Budget (AEB) once the relevant functions have been delegated to the Mayor of London for the period 1 April 2018 to 31 July 2019.
- 1.2 This report also provides an update on progress for agreeing the terms of the delegation letter which will constitute the legal transfer of the statutory AEB functions from the Secretary of State for Education to the Mayor, the general MoU underpinning this transfer and the mechanism for transferring the c. £311m annual AEB which are all expected to be finalised in early 2019.

**2 Recommendations**

The Mayoral Board is asked to:

- 2.1 **Endorse** the MoU between the Department for Education and the GLA in respect of AEB implementation funding for the period 1 April 2018 to 31 July 2019 (see Appendix A) which will be submitted for signature through the formal Mayoral Decision process following this meeting;
- 2.2 **Note** the update on the process for the formal delegation of functions from the Secretary of State for Education to the Mayor of London expected to be finalised in early 2019; and
- 2.3 **Note** the update on the process for transferring the c. £311m annual AEB for the 2019/20 academic year.

### **3 Introduction & background**

- 3.1 In the 2016 Autumn Statement, HM Government announced the commitment to transfer certain AEB functions in London to the Mayor. In [MD2255](#), the Mayor confirmed his intention to accept the AEB functions, subject to the principles agreed between the GLA and DfE and the final arrangement being confirmed by the Secretary of State for Education.
- 3.2 In order for the Secretary of State to transfer the functions and funding to the Mayor, he needs to be satisfied that the Mayor meets a number of readiness conditions (see Agenda Item 3), and to agree a number of key documents, namely:
- a MoU regarding implementation funding for the period 1 April 2018 to 31 July 2019 for managing the AEB once the relevant functions transfer to the Mayor of London (see Appendix A);
  - a delegation letter from the Secretary of State for Education formalising the transfer the statutory functions;
  - a MoU in support of the delegation letter to underpin the general principles; and
  - an annual grant determination letter (or similar) finalising the funding allocation for the 2019/20 financial year.

### **4 Issues for Consideration**

#### Implementation Funding MoU

- 4.1 The draft MoU (see Appendix A) between the GLA and DfE will formalise the provision of up to £1,920,054 implementation funding. The funding is to be transferred from HM Government to the GLA for the purpose of building capacity for managing the AEB once the relevant functions have been delegated to the Mayor of London during the period 1 April 2018 to 31 July 2019<sup>1</sup>. The funding is subject to the GLA providing evidence of expenses in respect of implementation activities such as those specified in the GLA April 2018 to July 2019 business case.
- 4.2 The MoU will be submitted for final decision by the Mayor following this meeting before onward submission to the Secretary of State for signature.

#### Delegation of functions letter and general MoU

- 4.3 DfE and GLA officers are currently agreeing the terms for a delegation letter which will be the formal mechanism for transferring the statutory functions from the Secretary of State for Education<sup>2</sup> to the Mayor. The letter will be supported by an MoU establishing a clear understanding between DfE and the Mayor in relation to the transferred functions.
- 4.4 The draft letter and MoU should provide confirmation that:

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<sup>1</sup> £1,441,767 for the financial year 2018-19 (1 April 2018 to 31 March 2019) and £478,287 for the financial year 2019-20 (1 April to 31 July 2019)

<sup>2</sup> Incorporating the Department for Education (DfE) and the Education and Skills Funding Agency (ESFA) functions.

- **transferred functions are as expected** i.e. all AEB functions will transfer to the Mayor with the exception of those relating to apprenticeships training and adult detention; and
  - **functions will come with the necessary funding** (c. £311m for 2019/20).
- 4.5 GLA and DfE officials are currently negotiating the exact terms of the delegation letter and MoU. These will be brought to the next meeting of this Board for consideration.
- 4.6 The MoU, wherever applicable, will be identical to those to be agreed between the Secretary of State and the 7 Mayoral Combined Authorities (MCAs) who are receiving the same AEB functions through a different statutory mechanism.<sup>3</sup>
- 4.7 The final delegation letter and MoU are due to be signed by the Secretary of State for Education and the Mayor in early 2019 and will be subject to the GLA's Mayoral decision-making processes. Once signed, the letter will constitute the legal transfer of the statutory functions, whereas the MoU will underpin the relationship between each involved party but will not be legally binding.

#### Confirmation of annual budget

- 4.8 The annual budget is expected to be confirmed by DfE each year through a grant determination letter and transferred via a Section 31 non ring-fenced transfer under the Local Government Act 2003. The budget is expected to be c. £311m for 2019/20.
- 4.9 The Mayor, along with the other MCAs receiving the AEB, continues to call on HM Government to provide an ongoing budget for administration funding to manage the AEB, giving parity with the Education and Skills Funding Agency (ESFA) who currently manage the provision. The Mayor is currently paying for all staffing and administrative costs associated with the implementation of the AEB in London from his own budget.

## **5 Equality Comments**

- 5.1 This report deals solely with the mechanics of the proposed delegation of certain educational functions from HM Government to the Mayor, and the provision of funding in relation thereto. The public sector equality duty under section 149 of the Equality Act 2010 will be relevant to the exercise of any delegated functions, but is not considered relevant at this stage.

## **6 Risks arising / mitigation**

- 6.1 GLA officers have strong working relationships with DfE and the Education and Skills Funding Agency (ESFA) counterparts and have developed the content of the implementation funding MoU together to ensure it reflects a mutually agreed arrangement.

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<sup>3</sup> The other MCAs are receiving devolved funding via Orders currently laid before Parliament whereas the Mayor is receiving delegated functions through s39A of the GLA Act 1999.

- 6.2 With regards to the terms for transferring the statutory functions and funding, negotiations continue and are supported at the appropriate level across all parties. Any risks and issues that arise from the negotiations will be escalated as required.

## **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.
- 7.2 The proposed MoU at Appendix A relates to the funding of the GLA, by the Department for Education, of preparations for the exercise by the Mayor of these functions.

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

- 8.1 In respect of the MoU at Appendix A, DfE have confirmed that 'demand led' section 31 grants are typically grants which reimburse expenditure in areas where it may be difficult to forecast, and are operated in a way that provides certainty to authorities in advance about the eligibility of funding - in the case of the implementation fund this means that the Department will pay up to £1,920,054 to the GLA for the period April 2018 to July 2019, subject to receiving evidence that the GLA has spent at least an equivalent amount from its own budget on activities to build capacity for managing the delegated AEB function from 2019/20, as described in the GLA's business case.
- 8.2 In respect of the MoU at Appendix A, DfE have confirmed that 'demand led' section 31 grants are typically grants which reimburse expenditure in areas where it may be difficult to forecast, and are operated in a way that provides certainty to authorities in advance about the eligibility of funding - in the case of the implementation fund this means that the Department will pay up to £1,920,054 to the GLA for the period April 2018 to July 2019, subject to receiving evidence that the GLA has spent at least an equivalent amount from its own budget on activities to build capacity for managing the delegated AEB function from 2019/20, as described in the GLA's business case. For information the implementation funding will span two financial-years as follows:
- 2018-19 – £1,441,767
  - 2019-20 - £478,287
- 8.3 As detailed within the main body of this report the annual budget, the amount of which has yet to be confirmed will be transferred via a Section 31 non ring-fenced transfer under the Local Government Act 2003. It is expected that the annual grant will be in the region of £311m. It should be noted that the annual grant will not include an administration budget to fund operational costs, so as a result, it is expected that the GLA will top-slice the annual grant to fund these costs. This will, however, be subject to further consideration internally at the GLA.

## 9 Next Steps

<b>Key activity</b>	<b>Date</b>
Submit implementation funding MoU for 2018/19 to Corporate Investment Board (CIB) for onward Mayoral Decision	September/October 2018
GLA/DfE to agree terms of delegation letter from the Secretary of State for Education to transfer certain AEB statutory functions	Early 2019
GLA/DfE to agree terms of a general MoU supporting the transfer certain AEB statutory functions	Early 2019
GLA/DfE to agree terms of an annual grant determination letter (or similar) finalising the funding allocation for the 2019/20 financial year.	By end March 2019

### Appendices:

- **Appendix A** – Draft Implementation Funding MoU between the Secretary of State for Education and the Mayor of London.

### Background documents

- GLA April 2018 to July 2019 business case.

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**ADULT EDUCATION BUDGET: IMPLEMENTATION FUNDING MEMORANDUM OF UNDERSTANDING (“MoU”) dated DD MM YYYY**

Between:

- (1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT (“**DfE**”)
- (2) **THE MAYOR OF LONDON** of City Hall, The Queen's Walk, London, SE1 2AA (“**GLA**”)

Each a “Party”, together the “Parties”.

DfE includes the Education and Skills Funding Agency (ESFA). ESFA is an executive agency sponsored by DfE and is responsible for funding education and skills for children, young people and adults.

**BACKGROUND**

- (A) The Secretary of State for Education has certain functions related to adult education, and the associated Adult Education Budget (AEB). Subject to meeting specified conditions, the Secretary of State intends in due course to exercise his powers under section 39A of the Greater London Authority Act 1999 to delegate those functions to the Mayor of London who would be responsible for carrying them out on his behalf. The Government intends delegation to have effect with respect to the 2019/20 academic year (1 August 2019 to 31 July 2020) and each year thereafter.
- (B) The purpose of this MoU is to establish the responsibilities of the Parties in respect of using implementation funding to build capacity during the period 1 April 2018 to 31 July 2019 for managing the AEB once the relevant functions have been delegated to the Mayor of London.

The Parties have agreed to cooperate under this MoU as follows:

## **1. KEY OBJECTIVE**

The Key Objective is to enable the GLA to use implementation funding provided by DfE for the period covering the start date of this agreement to 31 July 2019 under Section 31 of the Local Government Act 2003 ('a Section 31 grant') to build capacity for managing the delegated AEB from 2019/20 onwards, in line with activities outlined in the GLA's business case for the period April 2018 to July 2019. This MoU sets out the parameters for engagement with the respective Parties.

## **2. PRINCIPLES OF COLLABORATION AND THE PARTIES' RESPONSIBILITIES**

The Parties agree to adopt the following principles ("**Principles**") in relation to the Key Objective:

- To appropriately use the Section 31 grant funds for the purpose of implementation costs associated with preparation for delegation of the AEB functions;
- To act in good faith to support achievement of the Key Objective and compliance with these Principles.

## **3. PURPOSE**

This MoU is not intended to create a binding legal obligation between the Parties.

## **4. GREATER LONDON AUTHORITY OBLIGATIONS**

The GLA will use any implementation funding provided by DfE under a Section 31 demand led grant to build capacity for managing the delegated AEB functions from 2019/20 onwards, in line with activities outlined in the GLA's business case for the period April 2018 to July 2019.

## **5. DEPARTMENT FOR EDUCATION OBLIGATIONS**

The DfE will transfer within a reasonable time up to a maximum of £1,920,054 in total - £1,441,767 for the financial year 2018-19 (1 April 2018 to 31 March 2019) and £478,287 for the financial year 2019-20 (1 April to 31 July 2019) through a Section 31 demand led grant with this MoU in place, for the GLA's incurred and evidenced expenses in respect of

implementation activities such as those specified in the GLA April 2018 to July 2019 business case.

## **6. COSTS AND LIABILITIES**

- Except as otherwise provided in this MoU, the Parties will bear their own costs and expenses incurred in complying with their obligations under this MoU.
- Each of the Parties shall remain liable for any losses or liabilities incurred due to their own or their employees' actions and no Party intends that another Party shall be liable for any loss it suffers as a result of this MoU.

## **7. CONFIDENTIALITY**

- Each of the Parties understands and acknowledges that it may receive or become aware of Confidential Information belonging to one or more of the other Parties whether in the course of operating this MoU or otherwise.
- Each Party shall treat the other Party's Confidential Information as confidential and safeguard it accordingly, and not disclose another Party's Confidential Information to any other person (except their employees, agents, and professional advisers to which such disclosure is necessary for the purposes contemplated under this MoU).
- These obligations of confidentiality shall not apply to any Confidential Information to the extent that such Confidential Information is required to be disclosed by a requirement of law placed upon the Party making the disclosure (including any requirements for disclosure under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 or Code of Practice on Access to Government Information).

## **8. DATA PROTECTION AND RECORD KEEPING**

The Parties confirm that they shall comply with their responsibilities under the General Data Protection Regulation and the Data Protection Act 2018 and any subsequent legislation.

The GLA shall provide use of funds statements, confirming the grant received and spent was used wholly for the purposes for which it was given, at the end of financial year 2018-19 (i.e. in April 2019) and at the end of academic year 2018/19 (i.e. 31 July 2019), signed by its Accounting Officer. The DfE would also be happy to receive any information about effective practice.

## **9. START DATES AND DURATION**

This MoU will commence on the date of this agreement and will continue until 31 July 2019.

## **10. REVIEW AND AMENDMENTS**

- This MoU will not be reviewed.
- Amendments to this MoU may only be made upon written agreement of both Parties.

## **11. COMMUNICATIONS**

- All notices or communications under this MoU shall be in writing and sent for the attention of the representatives whose contact details are set out below or to such other person or other address as the relevant Party may give notice to the other Parties:
- For DfE: Deputy Director Further Education Funding, Dominic Hastings.
- For GLA: Assistant Director – Skills & Employment, Michelle Cuomo Boorer.

## **12. DISPUTES**

- Any dispute arising from this MoU which cannot be resolved through discussions between the Parties' representatives detailed in section 11 shall be referred to a Deputy Director of DfE and the Executive Director – Development, Enterprise, Environment of the GLA who shall convene within 30 days of such referral to discuss and seek to resolve the dispute.
- In the event the dispute remains unresolved, the final decision shall rest with the Secretary of State.

This MoU is signed and agreed on the date stated at the beginning of this MoU:

Signed for by <b>THE SECRETARY OF STATE FOR EDUCATION:</b>	
<b>Signature</b>	
<b>Name:</b>	
<b>Date</b>	

Signed for by <b>THE MAYOR OF LONDON:</b>	
<b>Signature</b>	
<b>Name:</b>	
<b>Date</b>	

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**Adult Education Budget Mayoral Board**

Date of meeting: **19 September 2018**

Title of report: **Skills for Londoners Framework consultation**

To be presented by: **Michelle Cuomo Boorer, Assistant Director – Skills and Employment**

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

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

**1 Executive Summary**

- 1.1 This report provides an overview of the Skills for Londoners (SfL) Framework consultation, which ran from 17 July to 17 August 2018. An interim analysis report by Hatch Regeneris on the consultation responses is attached as an appendix to this report.
- 1.2 A final consultation report with accompanying commentary will be published alongside the final SfL Framework in October 2018.

**2 Recommendation**

- 2.1 The Board are asked to:
  - 2.1.1 **Note** the interim consultation analysis report on the consultation responses; and
  - 2.1.2 **Note** that the final Skills for Londoners Framework and consultation report will be published in October 2018.

**3 Introduction and Background**

- 3.1 The Skills for Londoners Framework sets out the implementation plans for the Adult Education Budget (AEB), as well as the European Social Fund (ESF), and the Skills for Londoners Capital Fund. For the AEB, the Framework outlines at a high level the Greater London Authority's (GLA) approach to commissioning the AEB in year one, but also shows the direction of travel for future years.
- 3.2 The draft Skills for Londoners Framework was published for consultation on 17 July 2018. Hatch Regeneris was procured through a competitive tendering process to oversee the consultation which ran until 17 August 2018.

## **4 Issues for consideration**

- 4.1 An interim analysis report of the consultation responses is attached as an appendix to this report.
- 4.2 The interim analysis prioritised the questions relating to potential changes to current AEB provision and ESF programme priorities, as well as contract and commissioning arrangements, including the introduction of minimum contract values and a cap on subcontracting management fees.
- 4.3 In the main, the responses to these questions were positive with the majority of respondents in favour of the proposed changes.
- 4.3.1 On current **AEB provision**, there was support for the widening of eligibility to enable more low paid workers to access education and training. However, there was some concern expressed around the lack of additional funding available to deliver this. Respondents also highlighted the need for greater funding flexibility to develop and deliver programmes that better suited learner and sector needs.
- 4.3.2 On **ESF programme priorities**, there was support for the priority groups identified in the programme but some concern that the areas were too broad or lacking clarity.
- 4.3.3 On **contracting and commissioning arrangements**, respondents were broadly in favour of minimum contract values but identified the negative impact it could have on smaller, specialist provision. There was also majority support for a 20 per cent cap on subcontractor management fees, providing higher or varied fees could be negotiated where required. However, there was concern that implementing a cap on subcontractor fees could cause an upward shift in fees.

## **5 Equality comments**

- 5.1 In carrying out any functions in respect of the AEB, the Mayor will have due regard to the public sector equality duty under section 149 of the Equality Act 2010.

## **6 Risks arising / mitigation**

- 6.1 Not applicable.

## **7 Legal Comments**

- 7.1 Not applicable.

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

- 8.1 None directly arising from the recommendations set out in this report.



## **9 Next steps**

- 9.1 A final consultation report with accompanying commentary will be published in October 2018 alongside the final SfL Framework.

### **Appendices:**

- **Appendix A** – Interim analysis report of consultation responses by Hatch Regeneris (*included in an additional information pack and reserved from publication*)

### **Background Documents:**

None.

This paper is reserved from publication as it is considered that it may be exempt from disclosure under the Freedom of Information Act.

Document is Restricted.

## GREATER LONDON AUTHORITY

**Adult Education Budget Mayoral Board**

- Date of meeting: **19 September 2018**
- Title of report: **Adult Education Budget (AEB) Contracts and Grants Schedules**
- To be presented by: **Nabeel Khan, Senior Manager – Programme Delivery, Skills and Employment**
- Cleared by: **Lucy Owen, Interim Executive Director – Development, Enterprise and Environment**
- Classification: **Public** (with appendices A and B reserved from publication as they will be published at a later date as part of the GLA's procurement process)

**1 Executive Summary**

- 1.1 The Adult Education Budget (AEB) will be delegated to the Mayor of London from 1 August 2019. In preparation for this, the Greater London Authority (GLA) is undertaking an exercise to review existing documentation published by the Education and Skills Funding Agency (ESFA) relevant to the delivery of grant- and contract-funded adult education provision.
- 1.2 Under the legislative framework which permits the transfer of certain AEB functions to the Mayor, he is required to take all related decisions personally<sup>1</sup>. This is recognised as a matter reserved by law for the personal exercise of the Mayor only under the [Mayoral Decision-Making in the Greater London Authority Protocol](#).

**2 Recommendations**

The Mayoral Board is asked to:

- 2.1 **Endorse** the following draft contractual documents:
- 2.1.1 Conditions of Funding (Grant) at Appendix A (Annex 1) to this report;
- 2.1.2 Contract for Services Education and Training at Appendix A (Annex 2) to this report;
- 2.1.3 Adult Education Budget Funding and Performance Management Rules (Grant-Funded Services) at Appendix A (Annex 3) to this report;
- 2.1.4 Adult Education Budget Funding and Performance Management Rules (Procured Services) at Appendix A (Annex 4) to this report;
- 2.1.5 Adult Education Budget Funding Rates and Formula 2019-20 at Appendix A (Annex 5) to this report;

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<sup>1</sup> Section 39A of the Greater London Authority Act 1999

- 2.2 **Endorse** the following draft procurement documents:
  - 2.2.1 Contract notice at Appendix B (Annex 1) to this report;
  - 2.2.2 AEB Specification at Appendix B (Annex 2) to this report;
  - 2.2.3 Invitation to tender (ITT), AEB procured Standard Selection Questionnaire (SSQ) and AEB procured ITT questionnaire at Appendix B (Annex 3) to this report
- 2.3 **Endorse** the proposals regarding the documents outlined in Table 1 at Section 4 of this report; and
- 2.4 **Endorse** the proposals regarding the various guidance documents outlined in Appendix C for which it is recommended that the GLA does not need, or it is not within its remit, to publish separate versions from the national HM Government suite of documents.

### **3 Introduction and Background**

- 3.1 The AEB will be delegated to the Mayor of London from 1 August 2019. In preparation for this, the GLA is undertaking an exercise to review existing documentation published by the ESFA relevant to the delivery of grant- and contract-funded adult education provision.
- 3.2 The GLA must publish all AEB contract-related documentation at the start of the procurement process, which is planned for October 2018. As all AEB-related decisions must be made by the Mayor and taken through the GLA's formal decision-making processes prior to this date.
- 3.3 To support the development and drafting of the appropriate documentation, the GLA has engaged a legal partner, Eversheds Sutherland. Aligned with the Mayoral commitment to maximising provider stability in the first year of devolution, our approach to developing the documentation to support AEB devolution has been to use existing ESFA documentation as our baseline, and make edits to these only where necessary; specifically, documents have been edited to ensure they meet the requirements of the GLA's proposed approach to AEB grant and AEB procured contract performance management. This includes incorporating the updated European Social Fund (ESF) compliance requirements which apply to the AEB procured providers.

### **4 Issues for consideration**

- 4.1 Five key documents address the funding conditions and rules (see paragraphs 4.2 to 4.6 below). These require Mayoral review and approval.
- 4.2 **Conditions of Funding (Grant)** (see Appendix A (Annex 1)): the GLA has drafted a suite of documents that set out our proposed approach to Grant Management. These documents highlight key differences between the GLA's proposed approach and the ESFA's current approach. This information has been shared with Eversheds Sutherland in order that they can produce the GLA's new Conditions of Funding (Grant) template. Key proposed changes in our approach, compared with that of ESFA, include:

- 4.2.1 reintroduction of a growth request at least once per year in February, to replace the current 3% tolerance rate on over-delivery;
  - 4.2.2 requirement for providers to seek approval for any in-year changes to subcontracting and a proposed cap of 20% on subcontracting fees.
- 4.3 ***Contract for Services Education and Training*** (see Appendix A (Annex 2)): as at 4.2 but the key proposed changes in our approach, compared with that of ESFA, include:
- 4.3.1 the collection of extra data to meet ESF reporting requirements and payments processes for the procured AEB contracts through GLA Open Project System (GLA Ops);
  - 4.3.2 the ability for GLA contract managers to agree increases in funding, subject to performance and contract terms i.e. allow the GLA to redistribute any underspend across providers and make additional funding available.
- 4.4 ***Adult Education Budget Funding and Performance Management Rules (Grant-Funded Services)*** (see Appendix A (Annex 3)): this is based on the 'Adult Education Budget Funding and Performance Management Rules 2018 to 2019' (ESFA, 2018). This is a document that sets out the rules that apply to all adult education budget (AEB) funded provision in Greater London for the 2019 to 2020 funding year.
- 4.5 ***Adult Education Budget Funding and Performance Management Rules (Procured Services)*** (see Appendix A (Annex 4)): Same as 4.4 but this document will incorporate the ESF: funding and performance management rules 2014-2020 given that we need to ensure AEB procured provision is also ESF compliant in order to secure matched funding.
- 4.6 ***Adult Education Budget Funding Rates and Formula 2019-20*** (see Appendix A (Annex 5)): the GLA is currently reviewing the 'Adult Education Budget Funding Rates and Formula 2018 to 2019' (ESFA, 2018) in order to produce a document on Funding Rates to be published alongside those on funding rules (4.4. and 4.5) above.
- 4.7 In addition to 4.2 - 4.6 above, the procurement documents listed below will require sign-off from the Mayor and will be published at the launch of the procurement:
- 4.7.1 Contract notice (see Appendix B (Annex 1))
  - 4.7.2 AEB Specification (see Appendix B (Annex 2))
  - 4.7.3 Invitation to tender (ITT) (see Appendix B (Annex 3))
  - 4.7.4 AEB procured Standard Selection Questionnaire (SSQ) (see Appendix B (Annex 4))
  - 4.7.5 AEB procured ITT questionnaire (see Appendix B (Annex 5))
- 4.8 For the purpose of the October 2018 procurement process, all of the documents listed above are subject to final review by TfL procurement and the GLA's external legal advisors. Any changes made beyond this point will be technical points only and all final documents will be appended to the final

Mayoral Decision form for approval through the GLA's formal decision-making process.

- 4.9 In addition to the documents requiring Mayoral sign-off, the following are referenced within the current ESFA contractual paperwork. For some of these documents, decisions about whether to produce separate GLA versions is pending because of ongoing work to finalise our approach post-consultation. Any additional documents produced will need Mayoral review and sign-off. These are shown in Table 1 below.

**Table 1. Supplementary contractual documents – decisions pending**

<b>Document(s)</b>	<b>Description</b>	<b>Proposal</b>
<b>The post-16 audit code of practice 2017-2018 (2018) ESFA</b>	<i>'Sets out the common standard for the provision of assurance in relation to funding of post-16 providers.'</i>  <a href="https://www.gov.uk/government/publications/post-16-audit-code-of-practice">https://www.gov.uk/government/publications/post-16-audit-code-of-practice</a>	Our position on audit is still unclear. It is likely we will need to produce an additional GLA-specific document on our approach to audit, once this is confirmed. We are continuing to push DFE for an answer on Audit ahead of us going out to procure. In the worst-case scenario, the GLA will need to procure our own audit function, although we hope this will not be the case.
<b>The college accounts direction 2017-2018 (2018) ESFA</b>	<i>'Guidance for sixth-form and further education college corporations on preparing their annual report and financial statements ('accounts').'</i>  <a href="https://www.gov.uk/government/publications/college-accounts-direction">https://www.gov.uk/government/publications/college-accounts-direction</a>	
<b>What academies and colleges must publish online (2018) DfE</b>	<i>The information that academies, including 16 to 19 colleges and any educational institution that has academy arrangements, should publish on their websites.'</i>  <a href="https://www.gov.uk/guidance/what-academies-free-schools-and-colleges-should-publish-online">https://www.gov.uk/guidance/what-academies-free-schools-and-colleges-should-publish-online</a>	As we finalise the details of our approach to contract and performance management, and our contractual paperwork, we will need to review this guidance to identify whether our contracts place any additional requirements on providers in respect of publication; and, whether there are opportunities to link to existing GLA resources. This is not linked to the procurement timetable so can be developed post launch.
<b>Exceptional learning support – cost form (2018) ESFA</b>	<i>'Use these forms to submit estimated costs and final claims for exceptional learning support.'</i>  <a href="https://www.gov.uk/government/publications/exceptional-learning-support-cost-form">https://www.gov.uk/government/publications/exceptional-learning-support-cost-form</a>	This is not required in provider funding agreements or contracts but a decision must be taken on whether a GLA version of this will be required.  We will check requirements for this through the ESFA Data Governance Group.
<b>Funding claim form</b>	<i>'Information for education and skills training providers on submitting a funding claim to the ESFA for 2017 to 2018.'</i>  <a href="https://www.gov.uk/government">https://www.gov.uk/government</a>	This is not required in provider funding agreements or contracts but a decision must be taken on whether a GLA version of this will be required. This is not linked to the

Document(s)	Description	Proposal
	<a href="#">t/publications/sfa-funding-claims</a>	procurement timetable so can be developed post launch.  We will check requirements for this through the ESFA Data Governance Group.
<b>Funding higher-risk organisations and subcontractors</b>	This document sets out the criteria that the ESFA may apply to refuse funding for an organisation  <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/599126/Funding_Higher_Risk_Organisations_and_Subcontractors_March_2017.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/599126/Funding_Higher_Risk_Organisations_and_Subcontractors_March_2017.pdf</a>	This remains relevant and links with the contracting and subcontracting sections within our published funding rules. We may need to revisit depending on data sharing agreements with ESFA
<b>Requirement for external assurance on subcontracting control</b>	<i>'Assurance certificate for providers and employer-providers who deliver adult provision, including apprenticeships and traineeships and subcontract ESFA funding'</i>  <a href="https://www.gov.uk/government/publications/providing-external-assurance-on-subcontracting-controls">https://www.gov.uk/government/publications/providing-external-assurance-on-subcontracting-controls</a>	This remains relevant and links with the contracting and subcontracting sections within our published funding rules. We may need to revisit depending on data sharing agreements with ESFA. However, it is important to note that the Funding Rules are considered a "draft" until 1 August 2019 when delivery commences. It is likely that the GLA will publish subsequent versions of the Rules published at the time of procurement.

4.10 For other documents, it is either not necessary, and/or not within our remit, to make changes. For these, the Mayor is asked to consider and approve that the GLA does not need, or it is not within remit, to publish versions separate from the national HM Government suite of documents (see Appendix C for the list of documents with further detail on the proposals).

## 5 Equality comments

5.1 Not applicable. Future AEB Mayoral Board papers which set out processes in further detail will present an assessment of impact on equalities legislation from the desired approach to performance management and intervention, payments and contracting and subcontracting.

## 6 Risks arising / mitigation

6.1 The main risk around not meeting the timetable set out below is a delay to our procurement launch. At the moment, the GLA is planning to run a one stage procurement process, commencing October 2018 that will incorporate a SSQ and an ITT. This is scheduled to close in December 2018, which would mean that providers would not have to work over their Christmas holidays in order to submit their applications, a key point of contention with the most recent ESFA run procurement process. Any delays regarding the sign off of the contractual documents listed in this report would result in delaying the launch of the procurement process. The Skills and Employment team are currently working

with legal advisors to ensure that the original timetable (as listed below) can still be met.

## **7 Legal Comments**

- 7.1 This is a new area of work for the GLA and as such we have taken advice from external legal advisers with expertise in educational law. They have drafted, commented and advised on the full suite of documents relevant to the delivery of grant and contract-funded adult education provision.

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

- 8.1 The financial implications of this paper will be considered verbally at the Board Meeting and where required any detailed advice will be considered and given prior to reports being presented to the Corporate Investment Board in readiness for formal Mayoral sign-off.

## **9 Next steps**

The next steps are as follows:

<b>Activity</b>	<b>Timeline</b>
Deadline for Mayoral Decision (MD) submission to Corporate Investment Board (CIB)	24 September 2018
MD presented to CIB	1 October 2018
Procurement documentation and Contract Notice(s) published	October 2018

### **Appendices:**

**Appendix A** – Contractual documents (*included in an additional information pack and reserved from publication*)

**Appendix B** – Procurement documents (*included in an additional information pack and reserved from publication reserved from publication*)

**Appendix C** – Proposed approach to supplementary contractual documents



Agenda Item 6, Appendices A and B

This paper is reserved from publication as it is considered that it may be exempt from disclosure under the Freedom of Information Act.

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## Proposed approach to supplementary contractual documents

Document(s)	Description	Proposal
<b>16-19 education: funding guidance (2018) ESFA</b>	A suite of documents that provide: <i>[r]ules and guidance for using post-16 funding allocated by ESFA.</i>  <a href="https://www.gov.uk/16-to-19-education-funding-guidance">https://www.gov.uk/16-to-19-education-funding-guidance</a>	Documents are no longer relevant as they will be replaced by <i>GLA AEB: funding and performance management rules – grant-funded services</i> (see: 3.2 above)
<b>The Capital Transactions Guidance (2015) ESFA</b>	<i>'How to apply for funding to improve the estate, facilities and equipment of FE colleges and approved training organisations.'</i>  <a href="https://www.gov.uk/government/collections/sfa-capital-funding-for-fe-colleges-and-training-organisations">https://www.gov.uk/government/collections/sfa-capital-funding-for-fe-colleges-and-training-organisations</a>	This remains relevant for providers. As GLA has existing capital programmes with associated guidance, we would not need to produce additional documents for AEB. We have, however, established a system to ensure Skills & Employment and Regeneration officers are linked to streamline GLA contact for providers who will have AEB and GLA capital funding.
<b>College financial planning handbook (2018) ESFA</b>	<i>'Guidance for sixth-form and further education colleges on preparing and submitting their financial plan and supporting commentary'</i>  <a href="https://www.gov.uk/government/publications/financial-planning-handbook">https://www.gov.uk/government/publications/financial-planning-handbook</a>	This remains relevant – providers will be required to comply with this existing financial planning guidance - and, therefore, GLA will not be producing a new version of this document.
<b>The Minimum Standards (2017) ESFA</b>	<i>'How the ESFA will apply minimum standards for 2016 to 2017 to all age apprenticeships and adult (19+) education and training.'</i>  <a href="https://www.gov.uk/government/publications/minimum-standards-2016-to-2017-apprenticeships-and-aeb">https://www.gov.uk/government/publications/minimum-standards-2016-to-2017-apprenticeships-and-aeb</a>	This remains relevant – providers will be required to comply with these existing minimum standards - and, therefore, GLA will not be producing a new version of this document.
<b>Specification of the Individualised Learner Record for 2018 to 2019 (2018) ESFA</b>	<i>'Technical documents that define the ILR data that publicly funded providers must collect and return including ILR data returns calendar for 2018'</i>  <a href="https://www.gov.uk/government/publications/ilr-specification-validation-rules-and-appendices-2018-to-2019">https://www.gov.uk/government/publications/ilr-specification-validation-rules-and-appendices-2018-to-2019</a>	We will need to retain the 2019/20 version of the ESFA document and write cover notes describing GLA-specific coding requirements for AEB and AEB-ESF match

<b>Individualised Learner Record - Provider Support Manual 2018-2019 (2018) ESFA</b>	<p><i>'Guidance to help providers meet the requirements for ILR data returns.'</i></p> <p><a href="https://www.gov.uk/government/publications/ilr-guides-and-templates-for-2018-to-2019">https://www.gov.uk/government/publications/ilr-guides-and-templates-for-2018-to-2019</a></p>	
<b>Rigour and Responsiveness in Skills (2013) DfE/BIS</b>	<p><i>'Explains the plan to update our skills system to make it more rigorous and responsive to the needs of employers and learners.'</i></p> <p><a href="https://www.gov.uk/government/publications/rigour-and-responsiveness-in-skills">https://www.gov.uk/government/publications/rigour-and-responsiveness-in-skills</a></p>	<p>This remains relevant contextual information, however, to position the AEB delegation programme we refer particularly to the published Skills for Londoners Strategy and Framework documents.</p>
<b>Securing independent careers guidance (2018) ESFA</b>	<p><i>'Guide for further education colleges and sixth-form colleges on how to provide independent careers guidance.'</i></p> <p><a href="https://www.gov.uk/government/publications/careers-guidance-for-colleges--2">https://www.gov.uk/government/publications/careers-guidance-for-colleges--2</a></p>	<p>This remains relevant and, therefore, GLA will not be producing a new version of this document.</p>
<b>Traineeships (2018) ESFA</b>	<p><i>'Delivering 16 to 18 traineeships through ESFA funding'</i></p> <p><a href="https://www.gov.uk/delivering-traineeships-through-efa-funding">https://www.gov.uk/delivering-traineeships-through-efa-funding</a></p>	<p>This document is not relevant to our work on the delegated AEB budget. GLA will not be referring to this or producing a new version of this document.</p>
<b>Full-time enrolment of 14-16 year olds in FE and Sixth Form colleges (2018) ESFA</b>	<p><i>'Full-time enrolment of 14- to 16-year-olds in further education and sixth-form colleges'</i></p> <p><a href="https://www.gov.uk/guidance/full-time-enrolment-of-14-to-16-year-olds-in-further-education-and-sixth-form-colleges">https://www.gov.uk/guidance/full-time-enrolment-of-14-to-16-year-olds-in-further-education-and-sixth-form-colleges</a></p>	<p>This document is not relevant to our work on the delegated AEB budget. GLA will not be referring to this or producing a new version of this document.</p>
<b>Funding guidance for young people: sub-contracting controls (2018) ESFA</b>	<p><i>'This document sets out the ESFA compliance and control requirements and advice for institutions using third parties for ESFA-funded provision.'</i></p> <p><a href="https://www.gov.uk/government/publications/funding-guidance-for-young-people-sub-contracting-controls">https://www.gov.uk/government/publications/funding-guidance-for-young-people-sub-contracting-controls</a></p>	<p>The requirements of this guidance are relevant to our work on the AEB delegation programme will be captured within the <i>Adult Education Budget: funding and performance management rules – grant-funded services</i> (see 3.2 above), in sections related to subcontracting. The GLA will therefore not be producing a new version of this document.</p>
<b>Further Education Free Meals (2018) ESFA</b>	<p><i>'Guidance to help provide free meals to disadvantaged 16 to 18 year old students in further education funded institutions.'</i></p>	<p>This remains relevant and, therefore, GLA will not be producing a new version of this document.</p>

	<a href="https://www.gov.uk/guidance/16-to-19-funding-free-meals-in-further-education-funded-institutions">https://www.gov.uk/guidance/16-to-19-funding-free-meals-in-further-education-funded-institutions</a>	
<b>Further education area reviews: guidance for providers (2016) ESFA</b>	<p><i>'Guidance about the area reviews of sixth-form and further education colleges and how to carry out recommendations.'</i></p> <p><a href="https://www.gov.uk/government/collections/further-education-area-reviews-guidance-for-providers">https://www.gov.uk/government/collections/further-education-area-reviews-guidance-for-providers</a></p>	This remains relevant context and, therefore, GLA will not be producing a new version of this document.
<b>What academies and colleges must publish online (2018) DfE</b>	<p><i>The information that academies, including 16 to 19 colleges and any educational institution that has academy arrangements, should publish on their websites.'</i></p> <p><a href="https://www.gov.uk/guidance/what-academies-free-schools-and-colleges-should-publish-online">https://www.gov.uk/guidance/what-academies-free-schools-and-colleges-should-publish-online</a></p>	As we finalise the details of our approach to contract and performance management, and our contractual paperwork, we will need to review this guidance to identify whether our contracts place any additional requirements on providers in respect of publication; and, whether there are opportunities to link to existing GLA resources
<b>Guidance published, from time to time, by the Secretary of State for Education which sets out the expectations in relation to safeguarding practice within further education institutions</b>	<p><i>'Statutory guidance on inter-agency working to safeguard and promote the welfare of children.'</i></p> <p><a href="https://www.gov.uk/government/publications/working-together-to-safeguard-children--2">https://www.gov.uk/government/publications/working-together-to-safeguard-children--2</a></p>	This remains relevant – providers will be required to comply with existing statutory guidance and minimum standards relevant to their work. Therefore, GLA will not be producing a new version of these documents. We are, however, seeking advice from ESFA about how safeguarding is addressed within their current procurement, contracting and management approaches and will seek to reflect this in our paperwork, where relevant.
<b>Special educational needs and disability code of practice: 0 to 25 years (2015) DfE</b>	<p><i>'Guidance on the special educational needs and disability (SEND) system for children and young people aged 0 to 25, from 1 September 2014.'</i></p> <p><a href="https://www.gov.uk/government/publications/send-code-of-practice-0-to-25">https://www.gov.uk/government/publications/send-code-of-practice-0-to-25</a></p>	
<b>National Minimum Standards for Residential Accommodation for children in Colleges (published under section 87C of the Children Act 1989)</b>	<p><i>'Guidance for special schools providing residential accommodation for any child.'</i></p> <p><a href="https://www.gov.uk/government/publications/residential-special-schools-national-minimum-standards">https://www.gov.uk/government/publications/residential-special-schools-national-minimum-standards</a></p>	
<b>Provider registration on ESFA Information Management Service (2018) ESFA</b>	<i>'Information about requesting access to the Identity and Access Management System (IDAMS) and the user roles</i>	Providers will be required to register on GLA OPS and on-boarding training sessions will be scheduled. Contract

	<p><i>you need to access ESFA funding and data services'</i></p> <p><a href="https://www.gov.uk/government/publications/how-to-register-for-an-idams-account">https://www.gov.uk/government/publications/how-to-register-for-an-idams-account</a></p>	managers will also provide support as needed.
<b>FE choices performance indicators</b>	<p><i>'ESFA learner and employer satisfaction data provide comparable information to help learners and employers make informed choices about education and training.'</i></p> <p><a href="https://www.gov.uk/government/collections/fe-choices-information-for-providers">https://www.gov.uk/government/collections/fe-choices-information-for-providers</a></p>	This remains relevant context and, therefore, GLA will not be producing a new version of this document.
<b>Course directory portal</b>	<p>A suite of links to resources that offer help on a range of topics related to FE funding.</p> <p><a href="https://coursedirectoryproviderportal.org.uk/Help">https://coursedirectoryproviderportal.org.uk/Help</a></p>	This remains relevant and, therefore, GLA will not be producing a new version of this document.
<b>Subcontracting for the first time: Seeking written approval from the Skills Funding Agency</b>	<p>Information for lead providers on subcontracting for the first time</p> <p><a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/678314/Subcontracting_for_the_first_time_seeking_written_approval.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/678314/Subcontracting_for_the_first_time_seeking_written_approval.pdf</a></p>	This document has been superseded by GLA's new approach for approving subcontracting requests.

**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.

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<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.

<b>Key milestone</b>	<b>Date</b>
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*)

## 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.

This paper is reserved from publication as it is considered that it may be exempt from disclosure under the Freedom of Information Act.

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**Adult Education Budget (AEB) Mayoral Board**

Date of meeting:	<b>19 September 2018</b>
Title of report:	<b>AEB Grant Management Approach</b>
To be presented by:	<b>Nabeel Khan, Senior Manager – Programme Delivery, Skills &amp; Employment</b>
Cleared by:	<b>Lucy Owen, Interim Executive Director – Development, Enterprise and Environment</b>
Classification	<b>Public</b> (with appendix reserved from publication as it contains information intended for publication at a later date)

**1 Executive Summary**

- 1.1 This paper provides a summary of the current grant management processes undertaken by the Education and Skills Funding Agency (ESFA). It then sets out GLA proposals for the performance management of the Adult Education Budget (AEB) grant-funded provision following devolution of the AEB budget in academic year 2019/20.
- 1.2 Where possible, this report proposes an approach to performance management to ensure delivery of the AEB. Where the GLA is still awaiting some guidance from the ESFA and/or the Department for Education (DfE), the approach is subject to change following the signing of the Memorandum of Understanding between the GLA and DfE and receipt of the formal letter of delegation of powers from the Secretary of State to the Mayor. These areas have been clearly highlighted below and further information in relation to the approach set out in this report is included in the additional information pack provided with this agenda.
- 1.3 The AEB-procured and AEB-ESF provision will be subject to separate procurement and contract arrangements from the AEB grant-funded provision, which is set out elsewhere on this agenda.

**2 Recommendations**

- 2.1 The AEB Mayoral Board is asked to:
- 2.1.1 **Endorse** the recommended approach to grant management processes. This approach aligns closely to 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;
- 2.1.2 **Endorse** the recommended approach to the grant management process for Adult Community Learning (ACL) providers. This approach

will bring the management of ACL providers in line with the remaining grant-managed provision;

- 2.1.3 **Endorse** the recommendation that the GLA reserves the right to make changes to future performance management processes following a two-year trial;
- 2.1.4 **Endorse** the recommended management approach to financial health due diligence. This approach will mean the GLA takes a risk-based approach and uses the ESFA's existing financial health checks as an initial indicator of financial soundness;
- 2.1.5 **Endorse** the recommended approach to Qualification Achievement Rates and minimum standards. This approach will mean there is no change to the existing national approach to achievement rates and minimum standards;
- 2.1.6 **Endorse** the recommended approach to managing provider underperformance via intervention. This approach aligns with the ESFA triggers for informal and formal intervention but is managed on a case-by-case basis by the nominated GLA Provider Manager, rather than a separate intervention team;
- 2.1.7 **Note** the GLA's preferred position on Audit, subject to agreeing a service offer with the ESFA;
- 2.1.8 **Endorse** the recommended approach on Payments, subject to the Data Sharing Agreement with the ESFA. This includes: funding elements, funding claims and Earning Adjustment Statement (EAS); increases to grant values and Growth Requests; reductions to grant values; and reconciliation, which would mostly be in line with the ESFAs current practice.
- 2.1.9 **Endorse** the recommended approach to managing subcontractors. This includes the requirement for providers to outline plans to use subcontractors at the beginning of the funding year, seek approval for any in-year changes to subcontracting, and proposes to introduce a 20% cap on management fees.

### **3 Introduction and Background**

- 3.1 As part of the process to delegate AEB powers to the Mayor, the GLA will have to meet six readiness conditions to demonstrate to the Secretary of State for the DfE that, amongst other things, stability of the provider base and protection of the public interest through achieving value for money, will be safeguarded.
- 3.2 This paper and GLA's proposed approach to Contract Management (as set out at Agenda Item 9) addresses the sixth readiness condition – funding and provider management:  
*“Funding and provider management arrangements, including securing financial assurance, are agreed in a way that minimises costs and maximises consistency and transparency.”*
- 3.3 The approach set out in this paper been considered in detail and endorsed by the AEB Programme Board on 21 August 2018. A copy of the agenda and reports submitted to this meeting is available on request, which provide further details on all matters.

- 3.4 Funding and provider management arrangements cover a vast breadth of process-driven elements which define the overall contract management processes for the GLA AEB Grant Programme. There will be variations in the approach to AEB-ESF procured programmes, which will be detailed in a separate paper at Agenda Item 6.

### **Performance Management**

- 3.5 The GLA is proposing minimal changes to the current system operated by ESFA to ensure a smooth transition when the AEB is devolved in 2019.
- 3.6 The two changes being proposed from the existing ESFA approach are:
- 3.6.1 The introduction of a dedicated Provider Manager, a single point of contact for providers who will meet with them on a quarterly basis to discuss performance against financial profile and targeted outputs and outcomes. The Provider Managers will also develop an in-depth understanding of the local area needs, the provider's business cycle and challenges to delivery; and
- 3.6.2 Reintroducing a growth request at least once per year in February. The GLA will reserve the right to process further Growth Requests subject to the availability of funding and the capacity and capability of a provider to spend it in full.
- 3.7 The measures above will ensure that the GLA Provider Managers have timely access to data and decisions can be based upon sound evidence, which will in turn allow the GLA to ensure that the AEB budget is spent effectively and efficiently.
- 3.8 The performance management process undertaken by the ESFA is detailed at Appendix A.

### **Adult Community Learning (ACL)**

- 3.9 ACL providers are contractually obliged to hold a pound plus and local fee remission policy.
- 3.10 The only change the GLA is proposing is to reintroduce growth requests for ACL provision in place of the over-tolerance calculation. This will bring the management of ACL providers in line with the remaining grant-managed provision. The GLA will reserve the right to process further Growth Requests subject to the availability of funding and the capacity and capability of a provider to spend it in full.
- 3.11 The performance management process undertaken by the ESFA for ACL is detailed in the additional information pack at Appendix A.

### **Financial Health Due Diligence**

- 3.12 The ESFA conduct yearly financial due diligence assessments in August. These assess the solvency of the provider based on a three-year financial plan and intelligence. As the ESFA will continue to conduct financial due diligence on most providers, it is recommended that the GLA approach to financial due diligence will take the following management approach to assessing providers;
- 3.12.1 Where the organisation is on Register of Training Organisations (RoTO), an up-to-date financial health check is available, and the organisation's financial health check score is above "satisfactory": Finance will rely on RoTO and the ESFA financial health check;

3.12.2 If the organisation is not on RoTO, or an up to date financial health check is not available, or the organisation's financial health check score is "satisfactory" or below: GLA Finance will carry out full due diligence checks. The provider would need to undergo the full GLA due diligence checks as deemed a higher risk.

### **Qualification Achievement Rates and minimum standards**

- 3.13 Minimum standards are the minimum acceptable performance level for providers delivering ESFA funded activities. These are an aggregated national calculation based on individual providers' overall Qualification Achievement Rates (QAR) which are typically calculated at qualification level for education and training.
- 3.14 Given that London's provider QAR data will continue to inform national minimum standards after delegation, we propose no change to existing processes in the first few years of delegation. However, the GLA will require timely access to individual provider and wider London data produced by ESFA in order to effectively contract manage the delivery.

### **Intervention**

- 3.15 The ESFA currently provide a formal and informal intervention process, which is the process for managing the underperformance of contracted providers.
- 3.16 The ESFA have separate performance management and intervention teams. The performance management team leads the day-to-day communication with the provider, however, there are no regular meetings as one ESFA performance manager has a portfolio of 60 to 70 contracts for providers.
- 3.17 If a provider underperforms against a set of financial or quality standards, the case is handed to the intervention team who work directly with the provider to remedy the underperformance.
- 3.18 GLA Provider Managers will manage between 7-10 grant providers, on average, with additional procured providers and Independent Training Providers (ITPs). They will lead engagement at the local level and be involved in the funding cycle from beginning to end. They will have a comprehensive understanding of local context and the skills needs of the area. Using this intelligence, Provider Managers will be able to ascertain when performance is falling below contracted levels, or if an ESFA intervention trigger is in risk of being breached. This allows for early and coordinated intervention, including the development of an agreed plan of action to return the performance to the expected level. This intelligence will also inform the Provider Manager of any ESFA intervention measures applied to the provider and enable them to collaborate with ESFA colleagues to share best practice.
- 3.19 Due to the above, the GLA will not be establishing a dedicated intervention team for grant provision. The Delivery teams will retain oversight of the intervention proceedings against GLA funded providers to ensure a coordinated response to underperformance.

### **Audit**

- 3.20 The ESFA performs standard yearly audit checks on a sample of the provider base. The exception is when a whistle-blower alerts the grant manager to misconduct, at which point the ESFA may require an additional audit at the provider's expense.

- 3.21 The ESFA uses a procurement framework that currently consists of three external auditors to carry out audits for all of their funded provision. The framework is used for FE College audits and new ITPs. Local authorities are responsible for carrying out their own audit checks on their allocated funding. The framework is due to expire at the end of this year and is likely to be re-tendered in January 2019.
- 3.22 The GLA's preferred position is to enter into an agreement with the ESFA to audit GLA funded provision as part of their programme of audits: This option would reduce the audit burden for providers as it would avoid them being audited separately for different streams of funding.
- 3.23 Officers are currently unable to develop the preferred option further as we are yet to receive ESFA's proposal regarding audit. The GLA's internal auditors (MOPAC) were alerted to AEB devolution and became actively involved from January 2018; a draft terms of reference is in place for the AEB Advisory Review which sets out the role of Internal Audit in providing advice on the processes to be established. We would plan to carry out a review of the operation of the processes in place as part of the 2019/20 audit plan.

### **Payments**

- 3.24 The GLA is proposing to adopt the ESFA's approach to payments, subject to agreeing a data sharing protocol with the ESFA, that will cover all the key systems and forms involved in administering the payment approaches above, apart from slight differences highlighted in points 3.25 and 3.26 below.
- 3.25 The GLA is proposing that providers can submit Growth Requests during or shortly after the mid-year funding claim (February) and allow providers to voluntarily reduce their funding allocations through reduction statements (December/January and May). Having a Growth Request process will allow the GLA Provider Managers to have a full overview of skills delivery and additional funding needs across the provider base. At the same time, making additional funding available to over-performing organisations half-way through the delivery year will reduce the risk of any potential underspend.
- 3.26 ESFA currently also fund up to 3% over-delivery. This means they will fund over-delivery up to 103% of the AEB block grant funding allocation, subject to track-record checks. The GLA will not be adopting this approach and instead proposes to reintroduce the Growth Request process which will help towards mitigating any potential underspend and/or over-delivery.
- 3.27 The payment approaches used by the ESFA and the underpinning grant management approach are described in greater detail at Appendix A.

### **Subcontracting**

- 3.28 The GLA wants to ensure subcontracting in the provider market brings value and is strategic, in the sense that it addresses providers' curriculum and learners' needs, brings about cost effectiveness, engages new/niche markets, and that subcontractors are subject to fair and transparent practices.
- 3.29 Broadly, the GLA's approach to subcontracting will be the same as ESFA's. To satisfy requirements around achieving value for money, however, the GLA is proposing the following additional measures:
- Providers to outline any plans to use subcontracting arrangements at the beginning of the funding year;

- Approval to be required for any in-year changes to subcontracting arrangements; and
- A 20% cap to be installed on subcontracting management fees, unless a provider can demonstrate that a management fee exceeding this cap can be justified.

#### **4 Issues for consideration**

- 4.1 The expectation is that the GLA will broadly follow the same timescales and business cycle as the ESFA and that the GLA/ESFA will mutually exchange information on the provider base. This limits the options available to the GLA grant management process.
- 4.2 The GLA is heavily dependent on the ESFA for providing data. An agreement on data sharing is close to being finalised. Until such an agreement is reached, however, the GLA is at risk of not receiving the information required to adequately manage AEB grant. For example, without receiving data on previous financial health assessments, it will prove difficult to judge the direction of travel for a provider's financial health.
- 4.3 With regards to subcontracting, the suggested key changes refer to capping management fees at a 20% rate and introducing a requirement for subcontracting to be approved by the GLA at the beginning of the delivery year, with any in-year changes also requiring approval. Although the capping of management fees was well received by the sector, some resistance is expected on the introduction of subcontracting approvals. This is because some providers may feel this process change may impact on their ability to independently and flexibly decide on their AEB allocation spend as well as potentially delay subcontracting decisions, potentially resulting in underperformance.

#### **5 Equality comments**

- 5.1 Future AEB Mayoral Board papers which set out processes in further detail will present an assessment of impact on equalities legislation from the desired approach to performance management and intervention, payments and contracting and subcontracting.

#### **6 Risks arising / mitigation**

- 6.1 **Lack of consultation with the sector on performance management leads to development of an approach that is not fit for purpose.** Though the approach to performance management has been tested with providers during provider visits and cross sector roundtables with both in and out of London Providers, timescales do not allow for formal consultation of the grant management process in the Skills for Londoners Framework. To mitigate this, it is proposed that the grant management approach is tested through provider networks, such as Association of Colleges and Hoxex.
- 6.2 **The grant management process is heavily dependent on timely access to data, which needs to be agreed with ESFA.** The risk will be minimised by establishing, agreeing and entering into accurate, relevant terms of reference in the Memorandum of Understanding and data sharing protocol and maintaining a collaborative dialogue with ESFA both at the development and delivery stages.

- 6.3 **There is a risk of challenge from providers who have funding reduced or who do not receive a growth request.** This risk will be minimised by ensuring that all growth requests and reductions in funding are evidence based on data returns. Transparent justifications for funding reduction and growth will be made available.
- 6.4 **There is a risk of underperformance due to delayed approvals of subcontracting in-year change requests.** The GLA will develop systems that allow for timely and speedy assessment of in-year subcontracting approval requests. A comprehensive provider onboarding package will be offered and ongoing provider and sector engagement on processes and systems at the development and first year delivery stage aim to mitigate the risks involved. Payment decisions depend on assessing performance through Individualised Learner Record (ILR) data.

## **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 The Grant Funding element of the AEB will represent a proportion of the indicative annual budget of £311m due to be devolved from August 2019 (yet to be fully determined) with the remainder to be administered via procured contracts and / or ESF funded programmes.
- 8.2 The paper presented (and accompanying appendices) outlines the methodology currently undertaken by ESFA with regards to grant management processes / performance management, intervention, audit, payment approaches and sub-contracting. Much of these processes / methodologies will have to be reviewed in detail to ensure that they are compatible with existing GLA processes / systems and where they are not solutions built to ensure risks are managed effectively and are in line with the expectations of Government.
- 8.3 With regards to the options relating to the grant management processes; it is currently proposed that there will be no unnecessary changes to the current system operated by ESFA to ensure a smooth transition when the budget is devolved in 2019. It should be noted that this includes payments made on profile rather than in arrears on the delivery of output, which is currently the norm on the majority of GLA grant commissioned programmes. This is mitigated by the 20% achievement of learning aims payment that will be retained until the final claim, thus meaning adjustments can be made in the event of under delivery and / or ineligible expenditure (determined after project monitoring, intervention or audit).
- 8.4 All grant programmes at the GLA are subject to due diligence and, for the AEB Programme, Financial Services are content to continue to use the financial health checks undertaken by ESFA. Where required, further checks will be carried out on those organisations classified as inadequate and therefore high-risk. However, this will be dependent on gaining timely access to the ESFA's financial assessment. It should be noted, if the GLA do not get access to the ESFA's data, then the GLA will have to undertake the full due diligence on all aspects of the AEB programme. Further consideration will have to be given in relation to resources required for this key task, taking into

consideration the team capacity, costs and ultimately the delivery of the programme.

- 8.5 The GLA's approach to Qualification Achievement Rates & Minimum Standards to satisfy the readiness sub-condition are dependant to the ESFA providing timely and accurate data enabling the contract manager to determine whether performance is on target. The GLA will complement the RARPA with its own methodology over the longer term for ACL aims.
- 8.6 With regards to the options relating to Intervention: it is proposed to align to the ESFA triggers for informal and formal intervention, but is managed on a case-by-case basis by the provider's GLA contract manager rather than a separate intervention team.
- 8.7 With regards to the options relating to payment approaches: it is proposed to maintain a largely similar approach and methodology that the ESFA currently undertake, note a different approach to reconciliation with a proposal not to fund any over-delivery.
- 8.8 With regards to the options relating to subcontractor process: it is proposed to align this process to existing GLA subcontracting processes for other programmes. The rules on subcontracting will not be significantly different to what the ESFA currently have in place, however one important change is that currently providers do not require approval from the ESFA prior to entering an arrangement with a subcontractor.
- 8.9 Further consideration will be given to the audit elements of the programme in future Board meetings.
- 8.10 It should be noted that while the GLA are looking in the first instance to replicate much of the approach and methodology that the ESFA currently undertake, it is recommended that once commissioned and / or procured that methodologies adopted are reviewed to assess whether they are the most effective way of delivering the programme in the future.
- 8.11 Further detail in relation to each of the processes discussed above is detailed in Appendix A.

## **9 Next steps**

- 9.1 Following formal consideration by the AEB Mayoral Board, the approaches will be formalised by Mayoral Decision.
- 9.2 The approved option for AEB grant management will be further developed by Officers and externally tested through representative bodies. Where there is still some ambiguity on what the GLA's approach will be, i.e. Audit, officers will continue discussions with DfE and ESFA colleagues to ascertain clarity and agree a process which minimises the administrative burden on providers and does not result in a duplication of process.

## **Appendices**

- **Appendix A** – Detailed grant management approach documents (*included in a separate additional information pack and reserved from publication until the approach is formally approved by Mayoral Decision*)



## **Background Information**

Further background information on all areas set out in this report is available on request. This includes:

- AEB Programme Board agenda and minutes from 21 August 2018
- AEB Options analysis for performance management by the GLA
- ACL Options analysis for performance management by the GLA
- Risks and mitigation

This paper is reserved from publication as it is considered that it may be exempt from disclosure under the Freedom of Information Act.

Document is Restricted.

## Adult Education Budget Mayoral Board

Date of meeting:	<b>19 September 2018</b>
Title of report:	<b>AEB Procured and AEB – ESF Contract Management Approach</b>
To be presented by:	<b>Nabeel Khan, Senior Manager – Programme Delivery, Skills &amp; Employment</b>
Cleared by:	<b>Lucy Owen, Interim Executive Director – Development, Enterprise and Environment</b>
Classification:	<b>Public</b> (with appendix reserved from publication as it contains information intended for publication at a later date)

### 1 Executive Summary

- 1.1 This report sets out GLA options for the performance management of the Adult Education Budget (AEB) contracted provision following the delegation of statutory functions relating to the AEB to the Mayor at the start of the academic year 2019/20.
- 1.2 The AEB-procured provision will be subject to separate procurement and contract arrangements from the AEB grant-funded provision. These differences are due to the four-year contract lifecycle, the wider potential provider market and the European Social Fund (ESF) compliance requirements.<sup>1</sup>
- 1.3 This report also sets out the contract management approach for the AEB-ESF Programme. In principle the management approach will be similar to that undertaken within the current GLA ESF Co-Financing 2014-20 Programme, and will align, where possible, with the monitoring process of the AEB Procured provision.<sup>2</sup>
- 1.4 Where the GLA is still awaiting some guidance from the ESFA and/or the Department for Education (DfE), the approach is subject to change following the signing of the Memorandum of Understanding between the GLA and DfE. These areas have been clearly highlighted below and further information in relation to the approach set out in this report is included in Appendix A.

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<sup>1</sup> AEB Procured - GLA plans to competitively procure 10 per cent (approximately £32.5m) of the AEB per year. The remaining 90 per cent of the AEB will be allocated via grants on a non-competitive basis. The GLA proposes to use the competitively procured proportion of the AEB as match funding to draw down ESF.

<sup>2</sup> The GLA is seeking to match up to £71m of ESF funding over a 4-year period until 2023.

## 2 Recommendations

### 2.1 The AEB Mayoral Board is asked to:

- 2.1.1 **Endorse** the contract management approach. This approach aligns closely to 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 with the current approach taken by the GLA Co-Financing Organisation (CFO), ensuring ESF compliance.
- 2.1.2 **Endorse** the recommended approach to conducting due diligence. In the event that the ESFA is not able to provide sufficient information, or the Register of Training Organisations (RoTO) is not available, the GLA will conduct its own due diligence on all providers.
- 2.1.3 **Endorse** the recommended approach to managing provider underperformance via intervention for AEB Procured provision, subject to agreeing a final service offer with Ofsted. This approach aligns with the ESFA triggers for informal and formal intervention but is managed on a case-by-case basis by the provider's GLA contract manager, rather than a separate intervention team.
- 2.1.4 **Endorse** the recommended approach to managing provider underperformance for AEB-ESF contracts, noting that while the terminology differs, the approach is closely aligned with the recommended intervention approach for AEB Procured provision.
- 2.1.5 **Note** the GLA's preferred position on audit, subject to agreeing a service offer with the ESFA, and to **endorse** the audit requirements to ensure ESF compliance. This will require the submission of evidence with the periodic claims and a systems and file audit on a quarterly basis.
- 2.1.6 **Endorse** the recommended approach on Payment Approaches, subject to the Data Sharing agreement with the ESFA. This includes Funding Claims and Earning Adjustment Statement (EAS), increases and reductions in contract values and reconciliation, which is similar to the ESFA's current practice.
- 2.1.7 **Note** the proposal to report AEB Procured match to the Department for Work and Pensions (DWP) after year-end reconciliations, subject to confirmation from the European Programmes Management Unit (EPMU) that this approach is acceptable. 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 at audit.
- 2.1.8 **Endorse** the recommended approach to managing Subcontractors. This includes the requirement to seek approval for any changes to subcontracting arrangements after the contract is awarded and a proposed cap of 20% on management fees for AEB Procured provision, with maximum management fees of 10% for AEB-ESF provision.

2.1.9 **Note** that the approach to Qualification Achievement Rates (QAR) & Minimum Standards will also apply to the AEB Procured provision and this is set out in the appendix to the AEB Grant Management Approach Board Paper.

### **3 Introduction and Background**

- 3.1 As part of the AEB delegation deal, the GLA will have to meet six readiness conditions to demonstrate to the Secretary of State (SoS) that amongst other things, stability of the provider base and protection of the public interest through achieving value for money will be safeguarded.
- 3.2 This paper and the GLA's proposed approach to Contract Management addresses the sixth readiness condition – funding and provider management:  
*“Funding and provider management arrangements, including securing financial assurance, are agreed in a way that minimises costs and maximises consistency and transparency.”*
- 3.3 Funding 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.
- 3.4 All the below matters have been considered in detail and endorsed by the AEB Programme Board on 21 August 2018. A copy of the agenda and reports submitted to this meeting is available on request and provides further details on all matters.

#### **Performance Management**

- 3.3 For AEB Procured provision, given the complexity of the existing process and the need to ensure provider stability, the GLA is proposing minimal changes to the current system operated by ESFA to ensure a smooth transition when the AEB powers are delegated to the Mayor in 2019.
- 3.4 The two changes being proposed from the existing ESFA approach are:
- 3.4.1 The introduction of a dedicated Provider Manager, who will meet with providers on a quarterly basis to discuss performance against financial profile and targeted outputs and outcomes; and
- 3.4.2 That the GLA does not allow for 3% tolerance on over-delivery. Any variations to funding will be subject to the availability of funding and the capacity and capability of a provider to deliver the outputs/outcomes.
- 3.5 The measures above will allow the GLA to ensure that the AEB budget is spent effectively and efficiently and allow for sufficient ESF outputs to be claimed as match.
- 3.6 The performance management process undertaken by the ESFA is detailed at Appendix A.

## **Financial Health Due Diligence**

- 3.7 As the ESFA will continue to conduct financial due diligence on most providers, it is recommended that the GLA's approach to financial due diligence take the following approach to assessing providers:
- 3.7.1 Where the organisation is on the RoTO, an up-to-date financial health check is available, and the organisation's financial health check score is above "satisfactory": Finance will rely on RoTO and the ESFA financial health check; and
- 3.7.2 If the organisation is not on RoTO, or no up to date financial health check is available, or the organisation's financial health check score is "satisfactory" or below, Finance will carry out full due diligence checks.
- 3.8 The GLA will conduct due diligence checks on all providers that are ranked sufficiently highly following scoring and moderation to be recommended for funding and may also conduct due diligence checks on any proposed sub-contractors that are 'relied upon' to deliver the contract on the AEB-ESF Programme.

## **Intervention**

- 3.9 The ESFA currently provide a formal and informal intervention process, which is the process for managing the underperformance of contracted providers. The proposed approach assumes Ofsted will continue to inspect providers as per the current arrangement.
- 3.10 If a procured provider underperforms against contracted services, the standard result is the cancellation of the provider's contract within a three-month period.
- 3.11 GLA Provider Managers will manage, on average, between 7-10 grant providers, with additional procured providers and ESF contracts. They will lead engagement at the local level and be involved in the funding cycle from beginning to end. They will have a comprehensive understanding of local context and the skills needs of the area. Using this intelligence, Provider Managers will be able to ascertain when performance is falling below contracted levels. This allows for early and coordinated intervention, including the development of an agreed plan of action to return the performance to the expected level. This intelligence will also inform the Provider Manager of any ESFA intervention measures applied to the provider and enable them to collaborate with ESFA colleagues to share best practice.
- 3.12 There are differences in terminology, but the only significant differences between the approach to managing underperformance for AEB procured and AEB-ESF contracts is that AEB-ESF providers may not be subject to Ofsted inspections and ESFA minimum standards do not apply. Further details are outlined in the appendix.

## **Audit**

- 3.13 The ESFA performs standard yearly audit checks on a sample of the FE College provider base, as well as any new Independent Training Providers (ITPs) The exception is when the intervention process is triggered by a

whistle-blower, the ESFA may then require a provider to conduct an additional audit at the provider's expense.

- 3.14 The ESFA uses a procurement framework that currently consists of three external auditors to carry these audits. Local authorities are responsible for carrying out their own audit checks on their allocated funding. The framework is due to expire at the end of this year and is likely to be re-tendered in January 2019.
- 3.15 The GLA's preferred position is to enter into an agreement for the ESFA to audit GLA FE College AEB grant-funded and AEB procured provision as part of their programme of audits. This option would reduce the audit burden for FE Colleges as it would avoid them being audited separately for different streams of funding. However, AEB procured provision would still be subject to separate ESF compliance audits.
- 3.16 Officers are currently unable to develop the preferred option further as we are yet to receive ESFA's proposal regarding audit. This is expected to be shared with GLA officers by mid-August. The GLA's internal auditors (MOPAC) were alerted to AEB devolution and became actively involved from January 2018; a draft terms of reference is in place for the AEB Advisory Review which sets out the role of Internal Audit in providing advice on the processes to be established. We would plan to carry out a review of the operation of the processes in place as part of the 2019/20 audit plan.
- 3.17 All contracted provision (procured and ESF) would also be audited directly by the GLA through a 10% quarterly sample audit. Additionally, contracted providers will be required to provide certified scanned copies of the evidence required to support payments through an online secure portal. This is a risk-mitigation process for ESF document retention requirements which, if not met, could lead to significant financial penalties for the GLA.
- 3.18 The GLA will not require an external audit of expenditure for non-FE College providers as funding is paid on delivery of milestones and outputs. Funding rates would have already been subject to an assessment of costs and a test for value for money during the bidding process (ESF) or by ESFA at national level (AEB). For FE Colleges, the ESFA requires accounts to be prepared in accordance with their directions, and for an external auditor to audit these accounts. The audited accounts and external auditor's management letter must be shared with the ESFA; it is therefore proposed that these should also be shared with the GLA. GLA officers will develop audit guidance which will set out these requirements along with all other ESF and AEB audit requirements.
- 3.19 In addition to GLA and ESFA audits, AEB Procured providers will be subject to ESF audits from the GLA, DWP (and its agents) and The European Commission (and its agents), as will the AEB-ESF programme providers.

### **Payment Approaches**

- 3.20 The payment approaches used by the ESFA and the underpinning contract management approach for both AEB Procured and AEB-ESF are described in greater detail in the appendix.

- 3.21 On the above, for the AEB Procured provision, the GLA is proposing to adopt the ESFA's approach to payments, subject to agreeing a data sharing protocol with the ESFA, that will cover all the key systems and forms involved in administering the payments.
- 3.22 The collection of data and payments processes for the AEB-ESF contracts is proposed to be managed through GLA Open Project System (GLA Ops).
- 3.23 As set out in 3.5.2 the GLA Provider Managers may agree increases in funding, subject to contract terms, the availability of funding and the Provider Manager's assessment of the capacity and capability of a provider to deliver the outputs/outcomes, based on information built up through the GLA's contract management approach. Reallocation of funding between providers will enable the GLA to manage the risks of underspend or overspend at programme level, and help to ensure that the ESF targets can be met at Priority level.
- 3.24 ESFA currently also fund up to 3% over-delivery. This means they will fund over-delivery up to 103% of the AEB contracted allocation, subject to track-record checks. GLA recommend that there are no tolerances for over delivery. Any variations to funding will be subject to the process described in 3.27.

### **Subcontracting**

- 3.25 Broadly, the GLA's approach to subcontracting will be the same as ESFA's. However, to satisfy requirements around achieving value for money, the GLA is proposing the following additional measures:
- That approval will be required for any changes to subcontracting arrangements after contract award; and
  - Having a 20% cap on subcontracting management fees for AEB procured providers, unless a provider can demonstrate that a management fee exceeding this cap can be justified.
- 3.26 For AEB-ESF, prime providers are able to include the costs of managing subcontractors as part of their overall project costs, and so are not required to recover these costs through management fees. This approach ensures value for money and maximises the funding for delivery to participants. However, recognising that the shift from grant-funded ESF projects to contracting may require a different approach, providers bidding for the AEB-ESF contracts will be allowed to charge management fees of up to 10% to subcontractors. Providers will be asked to set out their approach during procurement and it is expected that where a prime chooses to charge fees it will lead to a reduction in the estimated management and administration costs included within the prime's bid, as the cost of managing the subcontractors will be covered by the fees.

## **4 Issues for consideration**

- 4.1 For AEB procured contracts, the expectation is that the GLA will broadly follow the same timescales and business cycle as the ESFA and that the GLA/ESFA will mutually exchange information on the provider base. This limits the options available to the GLA contract management process.



- 4.2 The GLA is heavily dependent on the ESFA for providing data in a timely fashion. An agreement on data sharing currently forms part of the Memorandum of Understanding and data sharing protocol that is close to being finalised. Until such an agreement is reached, the GLA is at risk of not receiving the information required to adequately manage AEB Contracts. For example, without receiving validated data by certain intervals, it may further delay our ESF match claims to the DWP.
- 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 the greatest ability to manage funding allocations through monitoring and financial returns. If the funding is drawn down in deferred payments from Government, there is an increased risk of reliability and dependency on providers and the ESFA for accurate data returns. Furthermore, the GLA will be more closely scrutinised for provider's achievement of targets in order to aid the GLA's ability to draw down sufficient ESF match.
- 4.4 With regards to subcontracting, the suggested key changes refer to capping management fees at a 20% rate. Subcontractors will be approved during procurement process and will be assessed as part of the bid. In addition, like the proposed approach to grant provision, any changes will require prior approval. Although the capping of management fees was well received by the sector, the introduction of subcontracting approvals is not universally accepted. Some providers feel this process change may impact on their ability to independently and flexibly decide on their AEB allocation spend as well as potentially 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. The GLA will have a much smaller pool of providers and will require all procured providers to be ESF compliant, this will therefore require closer monitoring of the providers to ensure compliance than they have previously been accustomed too.

## **5 Equality comments**

- 5.1 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.
- 5.2 Furthermore, the proposed AEB-ESF programmes will support a range of groups, particularly the most disadvantaged people not currently receiving sufficient support into employment or education. Such groups of people include young people who are not in employment, education or training (NEET), people without basic skills, people who are unemployed such as parents, ex-offenders, homeless people, black and ethnic minorities and people with disabilities. The proposed programmes also seek to support Londoners in low pay/ low skilled jobs.

## **6 Risks arising / mitigation**

- 6.1 **Lack of consultation with the sector on performance management leads to development of an approach that is not fit for purpose.** By engaging with industry associations, rather than providers directly, the risk of potential

competitive advantage has been reduced. Additionally, steps will be taken to ensure a level-playing field by making the information presented widely available to potential bidders. The feedback from Early Market Engagement exercises has both tested and informed the procurement approach. A PIN will be published in September 2018, setting out the GLA's purchasing intentions, informing the market that it should expect a procurement to commence and advertising planned market engagement activity. The GLA plan to hold up to four sub-regional workshops in late October 2018, following the publication of the Contract Notice. Interested bidders would be invited to attend, network with other providers and learn more about the AEB opportunity. GLA presentations, questions and answers will be made available to all bidders after the event via the ProContract system.

- 6.2 **The contract management process is heavily dependent on timely access to data, which needs to be agreed with ESFA.** This risk will be minimised by establishing accurate relevant terms of reference in the Memorandum of Understanding and data sharing protocol, and maintaining a collaborative dialogue with ESFA both at the development and delivery stages.
- 6.3 **The GLA's future AEB funding allocation, and potentially also London's allocation of the UK Shared Prosperity Fund post-Brexit, is dependent on the provider base performing to target.** This risk will be mitigated by ensuring strong monitoring and contract management processes are in place to ensure that providers are meeting the contracted targets.
- 6.4 **There is challenge from providers who have funding reduced or are not granted additional funding should it become available.** This risk will be minimised by ensuring that all increases or reductions in funding are based on evidence from tested data returns and intelligence gained through the contract management process. Justifications for funding variations will be clear and made available on request.
- 6.5 **There is a risk of underperformance due to delayed approvals of subcontracting change requests.** The GLA will develop systems that allow for timely and speedy assessment of subcontracting approval requests. A comprehensive provider onboarding package will be offered and ongoing provider and sector engagement on processes and systems with the aim of mitigating the risks involved.
- 6.6 **There is a risk that the AEB procured contracts do not deliver sufficient ESF eligible outputs/outcomes, or are destabilised by the DfE's Intervention Regime, resulting in a shortfall of ESF eligible match.** This risk is largely mitigated by the allocation method set out in the procurement paper and by procuring more AEB Procured provision than we intend to use as ESF match funding to provide a 'reserve' of approximately £59m.
- 6.7 **There is a risk that providers do not comply with ESF regulations and are therefore subject to ESF irregularities.** The provider training and induction during on-boarding, combined with the contract management and audit approaches set out in the appendix will mitigate this risk; with frequent monitoring visits identifying concerns from the beginning allowing time for providers to rectify any issues raised.

## **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 The report presented (and accompanying appendix) provides a summary of the current contract management processes undertaken by the ESFA. It sets out GLA options for the performance management of the AEB contracted provision following devolution of the AEB budget in academic year 2019/20.
- 8.2 The AEB-procured provision will be subject to separate procurement and contract arrangements from the AEB grant-funded provision. These differences are due to the four-year contract lifecycle, the wider potential provider market and the European Social Fund (ESF) compliance requirements.
- 8.3 This report also sets out the contract management approach for the AEB-ESF Programme. In principle the management approach will be similar to that undertaken within the current GLA ESF Co-Financing 2014-20 Programme, and will align, where possible, with the monitoring process of the AEB Procured provision.
- 8.4 All AEB Procured contracts and contracts for the AEB-ESF Programme, will be subject to due diligence to ensure providers are solvent, fit and proper and able to deliver against their contractual obligations and conditions. Where an organisation is registered on RoTO, GLA Financial Services are content to continue to use the financial health checks undertaken by ESFA. If organisations are classified as inadequate and therefore high-risk, further checks are required to be carried out by GLA finance on those organisations. It should be noted, if the GLA do not get access to the ESFA's data, then the GLA will have to undertake the full due diligence on all aspects of the AEB programme. If an organisation is not registered on RoTO, GLA Finance will carry out full due diligence checks. Further consideration will have to be given in relation to resources required for this key task, taking into consideration the team capacity, costs and ultimately the delivery of the programme.
- 8.5 With regards to the options relating to intervention: it is proposed to align to the ESFA triggers for informal and formal intervention, but is managed on a case-by-case basis by the provider's GLA contract manager rather than a separate intervention team. There is a risk that any provider insolvency may require additional funding support from the GLA. This risk is to be further investigated to determine whether an exceptional support fund can be reasonably explored.
- 8.6 The audit proposals as detailed in the appendix notes the GLA's preferred audit option ensuring ESF compliance.
- 8.7 With regards to the options relating to payment approaches: it is proposed to maintain a largely similar approach and methodology that the ESFA currently undertake, note a different approach to reconciliation with a proposal not to fund any over-delivery. There are potential financial implications around ESF claim delays to DWP for procured (match) provision which are under

discussion with GLA Finance and the European Programme Management Unit.

- 8.8 With regards to the options relating to Subcontractor process: it is proposed to align this process to existing GLA subcontracting processes for other Programmes. The rules on subcontracting will not be significantly different to what the ESFA currently have in place however one important change is, currently providers do not require approval from the ESFA prior to entering an arrangement with a subcontractor. It is also proposed to have a 20% cap on provider management fees for AEB procured provision unless otherwise justified and a 10% cap for AEB-ESF provision.
- 8.9 It should, however, be noted that while the GLA are looking in the first instance to replicate much of the approach and methodology that the ESFA currently undertake, it is recommended that once commissioned and / or procured that methodologies adopted are reviewed to assess whether they are the most effective way of delivering the programme in the future. The impact of the options above on the GLA Finance department's workload needs to be worked through to determine any additional burden.

## **9 Next steps**

- 9.1 Once considered by the Board the approaches will be formalised by Mayoral Decision.
- 9.2 The options for AEB Procured and AEB-ESF contract management will be further developed by Officers and externally tested through planned market engagement activity. Where there is still some ambiguity on what the GLA's approach will be, e.g. Audit, Officers will continue discussions with DfE and ESFA colleagues to get some clarity and agree a process which seeks to minimise the administrative burden on providers and avoid a duplication of process.

## **Appendices**

- **Appendix A** – Detailed contract management approach documents (*included in a separate additional information pack and reserved from publication until the approach is formally approved by Mayoral Decision*)

## **Background Documents:**

- AEB Programme Board agenda and minutes from 21 August 2018
- Background, risks and mitigations

Further background information on all areas set out in this report is available on request.

This paper is reserved from publication as it is considered that it may be exempt from disclosure under the Freedom of Information Act.

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