

# **Funding Higher-risk Providers and Subcontractors**

August 2012

Version 2

## **Background**

1. The Chief Executive of Skills Funding (the Chief Executive) has a statutory duty to secure the provision of education and training within her remit, as set out in the Apprenticeships, Skills, Children and Learning Act 2009. The Chief Executive fulfils this statutory duty to secure education and training by funding providers to deliver education and training; she may impose conditions on the funding she provides. The Chief Executive has a duty to make best use of her resources and ensure that the public funds provided to her to carry out her statutory functions are used for the purposes for which they are provided.
2. Most providers that receive funding from the Chief Executive deliver education and training in accordance with the terms and conditions of funding. However, some providers do not comply with the requirements imposed on them and the Chief Executive is unable to satisfy herself that the funding provided to them has been used for the delivery of education and training. In a few cases providers have deliberately sought financial gain at the expense of learners and the public purse.
3. The Chief Executive must exercise proper control over the funding for which she is responsible and in some circumstances she will exercise her discretion to prevent organisations deemed to represent a high risk to the proper use of public fund from receiving funding.

## **Purpose**

4. The purpose of this document is to set out criteria which would prevent a provider being considered for funding. For the avoidance of doubt, this applies to providers that are, or are seeking to be, funded directly by the Chief Executive and to organisations that are delivering, or are proposing to deliver, education and training funded by the Chief Executive under a subcontract. The Chief Executive has included, in all her funding agreements, the right to require a lead provider not to enter into or to cease subcontracting arrangements.

## **Criteria for rejection of providers set out in the Public Contracts Regulations 2006**

5. Regulation 23 of the Public Contracts Regulations 2006 sets out a number of criteria for the rejection of bids for public contracts.
6. Any bidder must be excluded, if the bidding entity, any of its directors or any other person who has powers of representation, decision or control of the bidding entity has been convicted of any of the following:
  - conspiracy which relates to participation in a criminal organisation
  - corruption
  - bribery

- fraud where the fraud affects the financial interests of the European Communities and falls within the meaning of any of the following:
  - the offence of cheating the Revenue
  - the offence of conspiracy to defraud
  - fraud or theft under the Theft Act 1968 and the Theft Act 1978
  - fraudulent trading under the Companies Act 1985
  - defrauding Customs
  - an offence in connection with taxation in the European Community, or
  - destroying, defacing or concealing documents or procuring the execution of a valuable security within the meaning of section 20 of the Theft Act 1968
- money laundering, or
- any other offence within the meaning of Article 45(1) of the Public Sector Directive (noting that the only offence referred to in Article 45(1) of the Public Sector Directive which does not appear to be covered in the list above is participation in a criminal organisation, rather than conspiracy which relates to participation in a criminal organisation as mentioned above).

7. In addition, any bidder can be excluded if that bidder:

- is insolvent (if a company) or bankrupt (if an individual)
- has been convicted of a criminal offence relating to the conduct of his business
- has committed an act of grave misconduct in the course of his business
- has not fulfilled his obligations relating to the payment of social security or taxes
- is guilty of serious misrepresentation in providing any information to the contracting authority in relation to his prospective bid
- if relevant, is not properly licensed to provide services in the State in which the bidder is established, or
- is not registered on the appropriate trade register in the Member State in which he is established (a UK or Irish bidder would be deemed to be registered on the professional or trade register if it is established in the UK and is certified as incorporated by the Registrar of Companies).

8. Where a criterion relates to a criminal offence, the Rehabilitation of Offenders Act 1974 (and subsequent amendments) may apply.

### **Additional criteria for rejection of providers**

9. The Chief Executive can also refuse to fund providers or permit subcontracting arrangement on the basis of the following criteria:
- previous activities that have resulted in significant repayment of Chief Executive or government funding (£100,000 or 5 per cent of contract value, whichever is the higher), this includes funding paid to a subcontractor to deliver education and training funded by the Chief Executive

- failure to repay funding due to the Chief Executive or other government body
  - failure to repay funding due under a subcontract to deliver education and training funded by the Chief Executive
  - information from awarding bodies identifying significant irregularities in the award of qualifications
  - two or more instances where the Chief Executive's staff have audited the provision of the provider and identified issues of non-compliance with conditions of funding
  - ongoing investigation relating to suspicion of fraud or irregularity, or possible failure to comply with conditions of funding under an existing funding agreement or subcontract
  - termination of a funding agreement or a subcontract to deliver education and training funded by the Chief Executive due to a breach of the conditions of funding or terms of a subcontract
  - withdrawal of funding following the failure to comply with a Notice of Withdrawal of Funding or failure to remedy a serious breach of contract.
10. The Chief Executive can refuse funding to providers or subcontractors where they have a director who was previously a director, or governor, or a senior employee, or shareholder, in another provider where one or more of the above criteria apply.
11. The Chief Executive can refuse to fund to providers or subcontractors where they have a director who was previously one of his or her employees or employed by a predecessor body, or other government body, who was dismissed for gross misconduct, or who resigned whilst suspended from employment and subject to a disciplinary investigation concerning allegations of gross misconduct.

### **Application of the criteria**

12. Where any of the criteria set out in paragraphs 6 to 11 above apply to any organisation the Chief Executive may take the following action:
- refuse to register the organisation on the register of training organisations
  - remove an organisation from the register of training organisations
  - exclude an organisation from bidding for or otherwise receiving funding
  - exercise his right to prevent any provider with whom he has a funding contract from subcontracting with the organisation.
13. Where the action is being taken because of an ongoing investigation relating to suspicion of fraud or irregularity, or possible failure to comply with conditions of funding under an existing funding agreement or subcontract, the position will be reviewed at the conclusion of the investigation to determine

whether an organisation should be excluded permanently from receiving funding.

### **Decision-making process**

14. This document will be published on the Skills Funding Agency website so that all providers, prospective providers and subcontractors are aware of the additional criteria on which the Chief Executive could refuse to fund a provider or subcontractor.
15. Decisions to take any of the actions set out in paragraph 12 will be taken by the Chief Executive or a member of her staff to whom she has delegated authority. The advice of the Head of Legal shall be sought beforehand. The organisation concerned will normally be notified of the proposed decision and the reasons for it and given the opportunity to make representations. Any representation will be considered before a final decision is taken. The organisation will be informed of the final decision and the reasons for it.
16. The process set out in paragraph 15 above will be applied all cases except where action is taken because of an ongoing investigation into serious allegations of fraud or irregularity and informing the organisation could prejudice the investigation. However, all reasonable steps will be taken to conclude the investigation quickly and reach a final decision.

### **Publication of Information**

17. The Chief Executive will publish on the Skills Funding Agency website a list of organisations to whom the criteria set out above apply and in respect of which the Chief Executive has taken action under paragraph 12.

Skills Funding Agency  
Cheylesmore House  
Quinton Road  
Coventry CV1 2WT  
T 0845 377 5000  
F 024 7682 3675  
[www.bis.gov.uk/skillsfundingagency](http://www.bis.gov.uk/skillsfundingagency)



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