



Skills Funding
Agency

Funding higher-risk organisations and subcontractors

February 2016

Of interest to public and private organisations in the further education and skills sector delivering or developing learning.

Background

1. The Secretary of State for Business, Innovation and Skills has statutory duties and powers to secure the provision of education and training. This includes funding providers of education and training, as set out in the Apprenticeships, Skills, Children and Learning Act 2009. The Skills Funding Agency (SFA) is an executive agency of the Department for Business, Innovation and Skills and exercises certain functions behalf of the Secretary of State.
2. Most organisations that receive funding from the SFA deliver education and training services in accordance with the SFA's terms and conditions of funding. However, some organisations do not comply with these requirements. In a few cases organisations have deliberately sought to gain financially at the expense of learners and the public.
3. The SFA must exercise appropriate control over funding for which it is responsible. In some circumstances this will result in the SFA exercising discretion to prevent from receiving funding organisations that represent a high risk to the proper use of public funds.

Purpose

4. The purpose of this document is to identify the criteria that would prevent an organisation being considered for funding. This applies both to organisations seeking funding directly from the SFA and to those proposing to deliver education and training services funded by the SFA under a subcontract. The SFA includes in all its funding agreements the right to require a lead provider not to enter into or to stop subcontracting arrangements.
5. This document applies both to public and private organisations that deliver education and training services, including those that have been given a [Loans Facility](#).

Criteria for rejection of organisations seeking funding, set out in the Public Contracts Regulations 2015

6. Regulation 57 of the Public Contracts Regulations 2015 sets out a number of criteria for the rejection of bids for public contracts. These are set out below.

7. “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 HM Revenue and Customs
 - 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 HM Revenue and Customs
 - an offence in connection with taxation in the European Community
 - destroying, defacing or concealing documents or procuring the execution of a valuable security within the meaning of section 20 of the Theft Act 1968

 - any offence listed in section 41 of the Counter Terrorism Act 2008, or in Schedule 2 to that Act, where the court has determined that there is a terrorist connection
 - money laundering
 - an offence in connection with the proceeds of criminal conduct within the meaning of sections 93A, 93B or 93C of the Criminal Justice Act 1988
 - an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004
 - an offence under section 59A of the Sexual Offences Act 2003

- an offence under section 71 of the Coroners and Justice Act 2009
- an offence in connection with the proceeds of drug trafficking within the meaning of sections 49, 50 or 51 of the Drug Trafficking Act 1994
- any other offence within the meaning of Article 57(1) of the Public Sector Directive 2015”

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

- is insolvent (if a company) or bankrupt (if an individual)
- is guilty of grave professional misconduct, which renders its integrity questionable has not fulfilled his obligations relating to the payment of social security or taxes
- has entered into agreements with other economic operators aimed at distorting competition
- has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions
- is guilty of serious misrepresentation in providing any information to the contracting authority in relation to a prospective bid
- if relevant, is not properly licensed to provide services in the state in which the bidder is established
- is not registered on the appropriate trade register in the member state in which it 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)”

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

Additional criteria for rejection

10. The SFA can also refuse to fund organisations or permit subcontracting arrangements on the basis of the following criteria:

10.1 - Previous activities have resulted in significant repayment of SFA or government funding within the last two years (£100,000 or 5% of contract value, whichever is the higher). This also includes funding paid to a subcontractor to deliver education and training services funded by the SFA.

10.2 - Failure to repay funding due to the SFA or other government body in excess of £50,000.

10.3 - Failure to repay funding due under a subcontract to deliver education and training services funded by the SFA in excess of £50,000.

10.4 - Information from awarding bodies identifying significant irregularities in the award of qualifications within the last three years.

10.5 - Two or more instances where the SFA or its agents have audited the provision of a lead provider and identified issues of non-compliance. This is non-compliance with conditions of funding within the last two years.

10.6 - 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.

10.7 - Early termination of a funding agreement or a subcontract to deliver education and training services funded by the SFA within the last three years.

10.8 - Withdrawal of funding following the failure to comply with a Notice of Withdrawal of Funding, or failure to remedy a serious breach of contract within the last three years.

11. The SFA can refuse to fund or prevent subcontracting with any organisation which has a director, governor, senior employee, or shareholder associated to the criteria above. This also applies if they were previously a director, governor, senior employee, or shareholder, in another organisation where one or more of the above criteria apply.

12. The SFA can refuse to fund or prevent subcontracting with any organisation which has a director, governor or senior employee who was dismissed for gross misconduct. This criteria is extended to those who resigned whilst suspended from employment and subject to a disciplinary investigation concerning allegations of gross misconduct. For organisations with shareholders, this is applicable if the shareholder was previously one of its employees or employed by a predecessor body, or other government body.

Application of the criteria

13. Where any of the criteria set out in paragraphs 6 to 12 above apply to any organisation, the SFA 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 its right to prevent any provider with which it has a funding agreement from subcontracting with the organisation

14. If action is taken because of an ongoing investigation relating to suspicion of fraud or irregularity the position will be reviewed at the conclusion of the investigation. This will determine whether an organisation should be permanently excluded from receiving funding. This is also applied to organisations that fail to comply with conditions of funding under an existing funding agreement or subcontract.

Decision-making process

15. We will publish this document on our website so that all relevant organisations are aware of the additional criteria on which the SFA may refuse funding or prevent subcontracting. The Chief Executive of the SFA, or a member of staff to who has delegated authority, will decide whether to take any of the actions set out in paragraph 13.

16. Normally, we will notify the organisation concerned of the proposed decision, and the reasons for it, and give them the opportunity to make representations.

We will consider any representation before making a final decision and communicate the reasons for the decision.

17. We will apply the process set out in paragraph 16 in all cases, except where action is taken because of an ongoing investigation. This includes serious allegations of fraud or irregularity and informing the organisation could prejudice the investigation. However, we will take all reasonable steps to conclude the investigation quickly and reach a final decision.



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