Guidance
Education & Skills
Funding Agency

Guidance
Funding higher risk organisations and subcontractors policy

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1. Background and introduction

1.1 The Education and Skills Funding Agency ("the ESFA") is an executive agency of the Department for Education. It has responsibility for funding education and training for children, young people and adult learners under the Secretary of State's functions under the Apprenticeships, Skills, Children and Learning Act 2009 (ACL). The ESFA also exercises the Secretary of State's functions under the Education Act 2002 in relation to academies. The ESFA also has responsibility for the provision of various education and training services and exempt charities.

1.2 Part of the ESFA's remit includes financing apprenticeship training and education services provided in respect of learners in employment. These services include, but are not limited to, apprenticeship training, adult education training programmes, further education programmes, higher education programmes and services provided to academies.

1.3 The ESFA's remit also includes the provision responsibilities of the Education Funding Agency (EFA) under the Education Act 2002 in relation to academies. The EFA's obligation of funding the education and training sector and must exercise its functions in such a manner that it considers it is responsible. This means it must ensure:

- public funds are properly spent
- services are to be delivered within the terms of agreements
- contracts and funding rules in place
- value for money for taxpayers is achieved, and
- that funding is used to deliver the policies and priorities set by the Secretary of State and the Ministers (Ministers) Parliament.

1.4 In addition to being responsible for funding the delivery of education and training services, the ESFA is responsible for the management of these services, processes and payments of grants and contracts to organisations and contracts through which funding is provided, in order to deliver the requirements of the Secretary of State.

1.5 The provision of public funding is contingent upon the ESFA being satisfied that the Provider is a fit and proper person to receive public funding and that proper use as set out in the agreements and contracts that it Provider holds with the ESFA.

2. Purpose of this policy

2.1 This policy sets out and defines what the ESFA means by a high risk Provider. It explains how the ESFA may take action as a result of the ESFA's assessment of a Provider.

2.2 For the purposes of this policy a Provider or prospective Provider means any organisation, public or private sector, which receives or is accessing ESFA funding through any of the funding streams (contracts, grants, or other funding agreements) or which is being considered for funding. The ESFA must be satisfied that the Provider is a fit and proper person to receive public funds as a condition of being allowed to enter into a contract or the contract set out in paragraphs 4 and 5 of this policy.

2.3 Where a prospective Provider is a Public Sector Provider, the ESFA will also use this policy when deciding whether to:

- refuse to register the Provider on the Register of Providers (which is not limited to the register of training organisations, the register of apprenticeship training providers, the register of adult education organisations)
- remove a Provider from any register used by the ESFA including but not limited to the register of training organisations, the register of apprenticeship training providers, the register of adult education organisations
- refuse to allow a Provider's bid(s) for funds and/or exclude a Provider from otherwise receiving funding from the ESFA (including, but not limited to, through subcontracting) through renewal fore one or more of the ESFA register, or through any type of contract or agreement with the ESFA or
- terminate a contract or
- terminate one or more or all the contracts or agreements held by the Provider with the ESFA or terminate any agreement or contract
- restrict or withdraw funding and/or stop payments or either a temporary or permanent basis.

3. Scope of the policy

3.1 This policy applies to public and private sector Providers (including employer providers and Providers operating as supporting Providers) in receipt of funding from the ESFA, organisations of scholars and academies, accepting the public funding and:

- adult education budget
- loans facility
- loans bursary
- 16-19 Bursary Fund Service
- European Social Fund
- apprenticeships (including carry in, processed, non-levy and any funded)
- 16 to 19 study programme
- 16 to 18 traineeships
- Celeva and Ofsted

It does not apply to bodies associated with the functions transferred from the Secretary of State for Education to Education Authorities by or under under the Local Democracy, Economic Development and Construction Act 2009.

3.2 Where the ESFA does not have a direct relationship with a Provider because they are contracted to the ESFA through a Supporting Provider to a High Risk Provider, the ESFA may require the lead Provider to take appropriate action. The ESFA may also require the lead Provider to take appropriate action if the ESFA has reasonable grounds to believe that any of the regulations in paragraph 2.3.

3.3 This policy complies and supplements the funding regulations, processes (including determining access to ill registers operated by the ESFA) and the Provider management and payment processes and systems, which are used in the delivery and management of the funding streams specified above.

4. Circumstances under which ESFA determines a Provider to be a high risk provider and access to funding will be refused or an existing funding stream will be withdrawn

4.1 The following paragraphs set out the circumstances where the ESFA will consider a Provider to be a High Risk Provider and will not enter into contract or funding or accept applications and/or bids for funding, taking action as set out in paragraph 4.2 of this policy. The ESFA will also take into account the Public Contracts Regulations 2015 and the mandatory and discretionary exclusion grounds set out in the Public Contracts Regulations 2015 and the circumstances and criteria which apply to the mandatory and discretionary exclusion grounds set out in paragraph 4.1 of this policy. The circumstances and criteria are applicable to the registers and to procured and non-procured contracts/agreements.

4.1 Contracts procured under the Public Contract Regulations 2015

Regulation 57 of the Public Contract Regulations 2015 (as produced at Annex 1 to this Policy) sets out specified circumstances in which a contracting authority must or may exclude a Provider from participation in a procurement. It also obligates a contracting authority to exclude a Provider from participation in a procurement procedure. If one of the circumstances in Regulation 57 applies in respect of a Provider, the ESFA is obliged to exclude the Provider from participating in the procurement process. The ESFA is also obligated to exclude a Provider from participating within the parameters of the law, observing the mandatory exclusions specified without exception and measures taken when it is permitted to do so.

4.2 Non Procured Contract/Agreements

For all applicants to the Register, and any supplementary contracts that have not been set out subject to the Public Contract Regulations 2015 the ESFA will, in accordance with the Public Contract Regulations 2015 and the Public Contract Regulations 2015 (specified in paragraph 4.1 of this policy) determine whether a Provider is a High Risk Provider. If any of the circumstances applies the ESFA may take action as set out in paragraph 4.2 of this policy.

1. Is bankrupt or in the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court or where it is in an arrangement with creditors.

2. Has been served with a Public Interest Winding Up petition under section 124A of the Insolvency Act 1986.

3. Has subjected to a director disqualification order under the Company Directors Disqualification Act 1986 or a director disqualification undertaking.

4. Has subjected to a director disqualification order under the Company Directors Disqualification (Northern Ireland) Order 1986 or a director disqualification undertaking.

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