



RGF Confirmatory Due Diligence

RGF Confirmatory due diligence

RGF bids are selected by Ministers on the basis of their application form. Each bidder must then obtain the services of a due diligence provider to prepare a confirmatory due diligence report. This is required to confirm that their project or programme represents value for money and that it will deliver the benefits set out in their application. The scope of the due diligence report must be agreed by BIS and the bidder, and the Department must approve an applicant's choice of due diligence provider.

For Round 3, we have widened the specification of providers who may be approved to produce confirmatory due diligence for the RGF.

The RGF Confirmatory Due Diligence guide which you can download, explains who is eligible to carry out this work, how you can be engaged as an approved organisation and outlines the scope of the due diligence required.

If you have any queries once you have reviewed the guidance, or if you would like to become an approved RGF due diligence service provider, please contact Ruth Forbes (Tel: 020 7215 6518 e-mail: ruth.forbes@bis.gsi.gov.uk).



RGF Confirmatory Due Diligence

What is RGF confirmatory due diligence?

RGF confirmatory due diligence reports are the means by which Government can ensure that RGF bidders, who have been selected by Ministers for support are genuinely able to deliver the job and investment outputs reflected in their application, before they enter into a contract with Government.

Who can perform confirmatory due diligence for the RGF?

RGF confirmatory due diligence can be performed by firms with relevant Mergers & Acquisitions transaction service expertise as well as those entitled to perform audits under the CA 2006. This recognises that audit expertise is not essential to performing confirmatory due diligence work for the RGF. By extending the range of firms that qualify to do this work, we hope to increase choice and competition, so keeping costs down for applicants. Confirmatory due diligence helps BIS understand the predictability of the Project and ability of the applicant to deliver contracted outputs. Firms undertaking confirmatory due diligence work must meet the following criteria to be acceptable to the Secretary of State:

- a. The firm must have a minimum of 3 key officers (engaged as partners/directors) with relevant expertise to ensure work can be directed by a competent substitute when necessary;
- b. The responsible officer (partner/director) must have a relevant track record over a minimum of 8-10 years to provide the depth of experience and skill we require to perform this confirmatory due diligence work;
- c. The firm must be able to provide an objective and independent standpoint. Most notably this means they must not have assisted the applicant with their RGF Application. We will not accept 'Chinese walls' operated within firms as a justification for being allowed to perform due diligence when the same firm also assisted an applicant with their RGF application;
- d. The firm must provide a list of the individuals appointed to perform a specific RGF confirmatory due diligence exercise. The named individual(s) shall be present during site visits and preparation of the due diligence report, as well as being available for follow up discussions with either the applicant or BIS officials. Substitution will not be permitted unless agreed in advance by both the applicant and BIS;
- e. The firm must have Professional Indemnity Insurance cover with a minimum base of at least £2 million for any one claim;
- f. The firm must visit the applicant's related site during execution of the due diligence exercise.



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To help demonstrate that the firm is capable of performing this type of work, membership of a recognised professional body (such as ICAEW, CISI, BBA/Chartered Bankers Institute) is preferred.

Firms who have not previously provided RGF confirmatory due diligence must submit a team CV confirming that the individual(s) appointed to perform the confirmatory due diligence work possess the necessary competence. This shall include:

- i. Knowledge of investment appraisal techniques,
- ii. Research techniques & investigative skills to substantiate the claims made by applicants,
- iii. Knowledge of commercial/financial/execution/technical risks and methods that may be used to mitigate same,
- iv. Access to information on competitors, skill shortages, economic outlook, local developments, etc.,
- v. State Aid knowledge or access to others with this expertise (to cover key aspects of Additionality, incentive effect, eligible spend defined under GBER, intensity thresholds, Assisted Areas, etc.);

The applicant must seek BIS agreement to the appointment of their preferred due diligence service provider. Provided the proposed firm satisfies the above criteria this will normally be agreed by return. However, where a new service provider is proposed we may require direct contact with the firm in order to determine their acceptability.

Engagement terms

2. Due diligence providers must enter into a tripartite arrangement with both the applicant and Secretary of State for BIS. Important aspects of the agreement include:
 - a. the due diligence work must be performed within agreed timescales consistent with the timetable contained in the conditional offer letter issued by BIS to the applicant - failure by the applicant and/or the due diligence service provider to meet our agreed timetable will mean that the applicant forfeits the offer of RGF assistance;
 - b. the applicant pays the due diligence service provider directly for the work done and report prepared – this includes all travel and other disbursements including costs of obtaining specialist advice from 3rd parties;



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- c. the due diligence report will need to be available for use by and disclosed to different Government departments – primarily BIS and CLG (who provide funding for the RGF and also appoint a Monitoring Officer to monitor delivery by the applicant against the contracted outputs);
- d. the agreement must reflect the agreed timetable for performance of the confirmatory due diligence work and presentation of the final report.



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What is the scope of confirmatory due diligence for the RGF?

The standard scope for a project applicant is shown below (for programmes a different scope applies which is based on the party and nature of the programme). Every project is different so this scope will be tailored, either by removing elements that are not applicable or enhancing elements where this is justified. The confirmatory due diligence report must be agreed by BIS so it is essential that the due diligence service provider is willing and able to provide detailed answers in accordance with the agreed scope. The standard scope gives a good indication of what this will involve.

Form of Due Diligence Report:

Introduction

[*Name of Firm*] has examined the Regional Growth Fund application (the “RGF Application”) form from [name of company] (the “Company”) dated in accordance with the terms and conditions of the engagement letter dated [*date*] and the Grant Offer Letter dated [*date* BIS to insert].

Except as set out below, our report is prepared solely for the confidential use of the Company and the Secretary of State for Business Innovation and Skills (“BIS”) and solely for the purpose of submission to BIS in connection with the RGF application. It may not be relied upon by the Company or BIS for any other purpose whatsoever. Neither the Company nor BIS may rely on any oral or draft reports [name of firm] provides. The report will be released to the Company and BIS on the basis that it shall not be made available, copied, recited or referred to in whole or in part in any other published document or to any other party without our written permission except where disclosure is to any other UK Central Government Department or where disclosure is required as a result of law or regulation, including an obligation arising out of European Community law or as a result of a decision by the European Commission. To the fullest extent permitted by law, except for the Company and BIS, the [name of firm], its partners and staff neither owe nor accept any duty to any other person (including, without limitation, any person who may use or refer to any of BIS’ publications) and shall not be liable for any loss, damage or expense of whatsoever nature which is caused by any person’s reliance on representations in this report.

Executive summary

The executive summary will summarise the key findings:

- Sources and uses of funding;
- State aid;
- Additionality;
- Management, financial reporting and internal controls;
- Financial performance and position;
- Review of credibility financial projections and timescales, including the supporting evidence;
- Review of employment impacts;
- Other grant assistance \ grant offer letters still current and/ or subject to continuing conditions;
- Parent financial performance and position;
- Management representations; and
- Any other points of relevance and interest that are identified in the work.



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Sources and uses of funding

Obtain a breakdown of and enquire into and comment on the level and nature of supporting third party evidence on the following:

1. The total funding requirement for the project;
2. The sources of funding for the project including terms; and
3. The uses of funding for the project.

State Aid

Support will only be given to projects that comply with State Aid rules on support to undertakings. Confirmatory diligence on the State Aid implications of the proposed RGF support is required in the following areas:

SME Investment Aid

1. Confirm status of the applicant as an SME as defined in Annex I of Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation);
2. Confirm that the costs set out in Table A2 of Schedule 2 of this Conditional Grant Offer Letter are eligible costs as defined in Article 12 of the General Block exemption Regulation; and
3. Confirm that the Applicant's calculation of the Gross Grant Equivalent and Aid Intensity of the RGF is consistent with the provisions of Article 4 of the General Block Exemption Regulation and the Communication from the Commission on the revision of the method for setting the reference and discount rates (2008/C 14/02).

Regional Investment Aid

The State Aid rules governing regional investment aid are contained in Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (the General Block Exemption Regulation) and in the Guidelines on National Regional Aid for 2007-2013 (2006/C 54/08) (the Regional Aid Guidelines).

1. Confirm that the premises at which the project is to be undertaken are located in an Assisted Area as defined in: <http://www.legislation.gov.uk/ukxi/2007/107/contents/made>
2. [Confirm the status of the Company as an SME as defined in Annex I of the General Block Exemption Regulation)];
3. Confirm that the costs set out in Table A2 of Schedule 2 of this Conditional Grant Offer Letter are eligible costs as defined in Article 12 of the General Block Exemption Regulation (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:214:0003:01:EN:HTML>) and complies with the provisions set out in points 34-36 and 50-56 of the Regional Aid Guidelines (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:054:0013:0044:EN:PDF>);
4. [Confirm that aid calculated on the basis of the expected wage costs arising from job creation as a result of an investment project complies with the provisions in points 40 and 57-59 of the Regional Aid Guidelines;]



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5. Confirm that the Applicant's calculation of the Gross Grant Equivalent and Aid Intensity of the RGF support is consistent with the provisions of Article 4 of the General Block Exemption Regulation, point 41 of the Regional Aid Guidelines and the Communication from the Commission on the revision of the method for setting the reference and discount rates (2008/C 14/02). This calculation should take into account any other aid for the project, whether it comes from local, regional, national or European Community sources, as set out in points 71-75 of the Regional Aid Guidelines. Confirm that the Gross Grant Equivalent and Aid Intensity so calculated are within the relevant aid ceiling as set out in points 44-49 and 92-93 of the Regional Aid Guidelines;
6. Confirm that the project as proposed will comply with the provisions of the Regional Aid Guidelines as follows:
 - a. that the project will take place in a sector to which the Regional Aid Guidelines apply (point 8);
 - b. that the aid will not be granted to a firm in difficulties within the meaning set out in the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/07, section 2.1) (point 9);
 - c. that work on the project did not begin before the date on which the Company was informed that the aid would be given (point 38);
 - d. that the aid beneficiary is providing a financial contribution of at least 25% of the eligible costs (point 39);
 - e. with reference to management representations, that the project does not form part of a larger project that could be regarded as a single investment project as defined in point 60 of the Regional Aid Guidelines; and
 - f. that the aid being granted does not constitute operating aid (working capital funding)(point 76).

Research, Development & Innovation (R&D&I)

The State Aid rules governing support for Research, Development and Innovation are contained in Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (the General Block Exemption Regulation) and in The Community Framework for State aid for Research and Development and Innovation (2006/C 323/01).

1. Confirm that the costs set out in Table's B2 and C2 of Schedule 2 of this Conditional Grant Offer Letter are eligible costs as defined in Article 31 Paragraph 5 of the General Block Exemption Regulation;
2. Confirm the allocation of eligible costs to the categories of research (Fundamental Research, Industrial Research and Experimental Development) defined in Article 30 of the General Block Exemption Regulation; and
3. Examine and confirm the Applicant's calculation of the Gross Grant Equivalent and Aid Intensity of the RGF support is consistent with the provisions of Article 4 of the General Block Exemption



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Regulation and the Communication from the Commission on the revision of the method for setting the reference and discount rates (2008/C 14/02).

Training Aid

The State Aid rules governing Training aid are contained in Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (the General Block Exemption Regulation)

1. Confirm that the costs set out in part 2 of the RGF application are eligible costs as defined in Article 39 Paragraph 4 of the General Block Exemption Regulation;
2. Confirm that the supported activity is either “specific training” or “general training” as defined in Article 38 of the General Block Exemption Regulation; and
3. Examine and confirm the Applicant’s calculation of the Gross Grant Equivalent and Aid Intensity of the RGF support is consistent with the provisions of Article 4 of the General Block Exemption Regulation and the Communication from the Commission on the revision of the method for setting the reference and discount rates (2008/C 14/02).

Notifiable Aid

1. Determine whether the aid is individually notifiable under the terms of Article 6 of the General Block Exemption Regulation, based on information provided by management. Where the aid is individually notifiable, review, comment on and include as part of the report the information provided by the beneficiary, including that relating to third parties, in full and final form, to allow BIS to proceed with the notification process in the manner determined by the European Commission.
2. Determine whether the project is a large investment project as set out in point 60 of the Regional Aid Guidelines, but is ‘not notifiable’ under Article 6 of the General Block Exemption Regulation and point 64 of the Regional Aid Guidelines, based on information provided by management. Where the project is a large investment project, review, comment on and include as part of the report the information provided by the beneficiary in full and final form to allow BIS to inform the European Commission of the project in compliance with point 65 and Annex III of the Regional Aid Guidelines.

Incentive Effect

Confirm that the Applicant has analysed in an internal document the viability of the aided project or activity with aid and without aid and that such internal document was or is being submitted to BIS and that it contains a credible analysis and demonstration of the incentive effect of the aid as defined in Article 8 of the General Block Exemption Regulation.

Additionality

Support will only be given for Projects, Packages and Programmes that will not be pursued in the absence of RGF support — i.e. RGF must lead to additional economic activity.

Assess the Applicant’s additionality argument, described on part 1 of the application form, including:

1. Whether the project would proceed without RGF funding;



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2. Any alternative ways the applicant may have to take the project forward in the absence of RGF support; and
3. The minimum amount of funding required to allow the project to proceed.

And comment thereon by performing one or more of the following:

1. Obtain information from the Applicant about the investment appraisal criteria used by the Applicant or its Group and its use in this case. Enquire about the availability of evidence to indicate that the appraisal criteria were used consistently to evaluate projects;
2. Set out details of the precise location and strengths of the alternative option(s) for the project. Comment on the level of the Applicant's knowledge that exists around the alternative scenario(s) as included within the application and evidence that the project team has considered the alternative. Obtain a comparison of the full discounted returns (NPV) to be earned by the project taking into account all relevant factors for the preferred location with the alternative project options and compare key differences with relevant historical trading data or other evidence.
3. Review the Applicant's sensitivity analysis for selected key differences for each of the scenarios.
4. [Additional tests to be tailored for cases that use a different additionality case, e.g. aid speeds project up, expands its scope or scale or reduces risks.]

Management, financial reporting and internal controls

Undertake a high level review and comment on:

1. the Applicant's corporate governance arrangements, project governance and anti-corruption policies, based primarily on discussions with, and evidence provided by, the Applicant;
2. Issues of key person dependence, gaps in management, succession plans, financial management and governance;
3. Remuneration policy and procedures, including dividends; and
4. Overview of financial, management and internal financial reporting procedures, including key accounting policies, compliance with UK GAAP and issues arising from the Board summary report of the auditors.

Financial Performance and Position

Undertake a high level analysis and comment on the financial performance and balance sheet position of the UK entity business and/or UK group (as appropriate) with reference to:

1. The last three years audited financial statements;
2. Last full year unaudited management accounts, where audited accounts for that year are not available;
3. Latest management accounts with comparison to budget.

This analysis will include the tests set out in Annex 1 below.



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Review of financial projections and timescales, including the supporting evidence

Undertake a high level analysis, based on information provided by the Applicant, and comment on the viability of the project and in particular:

1. Whether the information within the project's present business plan is consistent with the project detailed in the original RGF Application, highlighting any material differences;
2. Review the project and business plan to identify the key elements in order to assess the extent of evidence supporting the project objectives and the forecast assumptions with reference to other appropriate evidence e.g., historical experience, financial buffers, contingency planning and material risks to the overall delivery of the project;
3. Understand and comment on the process of setting budgets / project planning and historical forecasting accuracy. Comment on the processes and the internal and external teams that have been assembled to manage the project;
4. Whether the Company/Group have experience of similar projects and whether these were successfully executed or were there delays or difficulties in execution, project failures, or budget overspends. Comment on what processes and controls the business has in place to mitigate such risks;
5. Current project status;
6. Comment on the status of the finance arrangements for the project including as appropriate contributions from the UK company, parent, third party equity, bank finance etc., identifying the current status, key risks and the contingency planning in this regard; and
7. Comment on the ability of material cost overruns to be funded by the UK company/parent to ensure the project is completed and on the apparent limit to such funding relative to the proposed project.

Review of Employment Impacts

Undertake a high level analysis, and comment on:

1. By reference to HR/ Payroll information, confirm the baseline employment at the Premises on the date of the application (DATE, MONTH, YEAR) and at the start of the Project;
2. Confirm that the anticipated Site Total employment at the end of the Project at the Premises is consistent with the financial projections and is based upon reasonable assumptions;
3. Confirm that the anticipated Site Total employment at the end of the Project at the Premises is consistent with the original RGF application, stating any reasons for a divergence;
4. The credibility of the safeguarding argument presented by management – comment and provide an opinion on the jobs deemed to be safeguarded are at imminent risk of being lost if the project does not proceed; and
5. By reference to management representations, confirm the number of jobs still in conditions under previous grant assistance contracts.



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Other grant assistance \ grant offer letters still current and/or subject to continuing conditions

By reference to management representations and any other available sources (including relevant grant assistance contracts provided to you by the Company), comment on whether the Project description and forecast deliverables, capital expenditure and jobs to be created appear to be separate and distinct from any other grant assistance \ grant offer letters identified as still current and/or subject to conditions.

Parent Credit Standing

Undertake a high level review and comment on the following in respect of [name, company registration and registered address of parent]:

1. Its ability to meet its contractual commitments under the RGF grant application, as applicable, and its capability to meet any cost overruns to support the Company in general and specifically to complete the Project, using as appropriate public information and Applicant information as well as discussions with [name of parent]; and
2. Financial position, key ratios and management's going concern consideration using as appropriate available public information, results, presentations, management information, brokers reports, share price trends and market capitalisation. Comments to include:
 - a. Summary of the parent's balance sheet as the last audited year end including principal categories of assets and liabilities, contingent or unrecorded liabilities (if identified), the net borrowing position and gearing;
 - b. Profitability including EBITDA;
 - c. Cash flow generation;
 - d. Level of available liquidity maturity profile of debt;
 - e. Key current credit rating agency ratings for the group (including changes in trends in rating over the last 24 months); and
 - f. Litigation (if identified).

Management representations

The factual sections of the final report are to be shown to the management of the Applicant to confirm that, to the best of their knowledge, the facts, as stated, are accurate in all material respects, any opinions attributable to them are fairly stated and reasonably held, they have made available all significant information relevant to the final report of which they have knowledge and they are not aware of any material matters relevant to our terms of reference which have been excluded. The final report will comment on the absence of, or limitations to, such management representations



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Annex 1: Due Diligence Requirements on Historical Financial Information

Historical Trading Results

1. Summary of the profit and loss accounts per statutory accounts for the last 3 years plus current year to date trading (management accounts). Explanation of basis of preparation, including:
 - a. Brief outline of key accounting policies;
 - b. impact of any significant changes in the last 3 years;
 - c. impact of any restatements for consistency.
2. Analysis of sales development as appropriate, e.g. by product (price and volume), activity, geography, mix changes, seasonal patterns and trends (if material). Brief overview of customer base; highlighting any concentration issues.
3. Indicate whether there is any over-reliance on a single supplier.
4. Margin trends by product or other relevant sub-category.
5. Brief commentary on significant fluctuations in overheads. Analysis of fixed v variable cost base and comment on evidence of historical ability to flex cost base during market downturn or period of growth.
6. Brief summary analysis of profit margins and EBITDA and reasons for significant fluctuations over time
7. Analysis of and commentary on items below EBITDA:
 - a. “exceptional” items.
 - b. interest
 - c. details of any prior period adjustments.
8. Brief details of any material long term and/or onerous contracts.
9. High Level consideration of current year to date trading per latest management accounts, compare to budget and previous year to date and identify and quantify key trends in results.

Historical Cash Flows

10. Headline overview of operating and net cash flows for the last 2 years and latest period available and brief comment on historical cash conversion record. How much cash and cash equivalents does the business currently hold?
11. Analysis of working capital profile by key component, comment on intra-month working capital requirement and current basis of funding working capital requirement.



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Historical Net Assets

12. Overview of net assets at each year end for the last three financial years and at latest available date with an explanation of significant trends.
13. Overview of intangible fixed assets
14. If significant stock levels held, analysis of inventories, including basis of accounting, existence, ageing and basis of provisioning.
15. Trends in current and quick ratio. Issues with bad debts (current and historical). Assessment of the Applicant's provisions on the Balance Sheet.
16. Analysis of the net interest bearing debt by component and maturity (including cash and equivalent, bank overdrafts, loans, intra group financing, finance leases, other interest bearing liabilities).
17. Any terms of borrowings significantly different from market conditions; any exposure to specific financing instruments; contingent liabilities and capital commitments as disclosed by directors.
18. Summary and implication of any off balance sheet financing arrangements.
19. A summary of any current, pending or threatened litigation by or against the Applicant Company, as disclosed by the Directors and their quantification of any potential liabilities or contingencies associated therewith.